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Tuesday, September 23, 2003

THE HONOURABLE DAN HAYS  
SPEAKER





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## THE SENATE

Tuesday, September 23, 2003

The Senate met at 2 p.m., the Speaker in the Chair.

Prayers.

### NEW SENATOR

**The Hon. the Speaker:** Honourable senators, I have the honour to inform the Senate that the Clerk has received a certificate from the Registrar General of Canada showing that the Honourable Mac Harb has been summoned to the Senate:

### INTRODUCTION

**The Hon. the Speaker** having informed the Senate that there was a senator without, waiting to be introduced:

The following honourable senator was introduced; presented Her Majesty's writ of summons; took the oath prescribed by law, which was administered by the Clerk; and was seated:

**Hon. Mac Harb**, of Ottawa, Ontario, introduced between Hon. Sharon Carstairs, P.C., and Hon. Jean-Robert Gauthier.

**The Hon. the Speaker** informed the Senate that the honourable senator named above had made and subscribed the declaration of qualification required by the Constitution Act, 1867, in the presence of the Clerk of the Senate, the Commissioner appointed to receive and witness the said declaration.

• (1410)

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, today we welcome with pleasure our newest member of the Senate chamber, the Honourable Mac Harb. Many senators know Mac from his work on behalf of his constituents in the Ottawa area. Before his election to Parliament, he worked in the private sector and served for a time as Deputy Mayor of the City of Ottawa.

While Senator Harb has earned the respect and admiration of the Lebanese community here, he is perhaps better known for his enthusiastic admiration of Canada as his adopted country. We are happy to have a member of such spirited patriotism among our ranks, and we welcome you, Senator Harb.

**Hon. Senators:** Hear, hear!

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, on behalf of my caucus colleagues and myself, I too welcome our new colleague and wish him well in his new responsibilities. The arrival of another former member of the House of Commons — in this case who also has some municipal

experience — led me to do a little research, which I believe will be of interest to honourable senators and to members of the other place, too.

Out of 101 sitting senators in this place today, 24 were elected to the House of Commons, while two were unsuccessful candidates. Thirteen senators have served provincially and territorially, while one was unsuccessful provincially; and 11 senators have been elected at the municipal level, including Senator Harb. Is it any wonder, then, that the Senate has more legislative experience than any elected body in Canada?

There is a continuity of experience here that is unique and constant because rare are those who are tempted to leave this place voluntarily. Of the 855 senators named since Confederation, only 12 resigned to run for election and only four were successful. Senator Carstairs will remember that one of those unsuccessful senators happened to be her predecessor.

Many conclusions can be drawn from this, and mine is a simple one: Participation in the Senate is unique and enriching. Particularly, despite all the naysayers, the Senate is a place where one can individually make direct and recognizable contributions to the legislative process, something which the stifling atmosphere in the other place seldom allows and which Senator Harb will no longer have to put up with. I wish him well in his new responsibilities.

[Translation]

**Hon. Marcel Prud'homme:** Honourable senators, as they put it so well in Quebec, "Je me souviens." I remember the time I spent in the House of Commons with Senator Harb. It was my final term there, and his first. I wish to add to what Senators Carstairs and Lynch-Staunton have said.

[English]

We have among ourselves not only senators with great experience, but the only woman ever elected leader of a party and who went on to be elected as premier of her province. I am talking about Senator Callbeck. We also have among us the former Leader of the Liberal Party of Manitoba, Senator Carstairs.

We are quite a bunch of unique people. What Senator Lynch-Staunton has said should be repeated all the time because there is a lot of experience in this place, experience that is unfortunately not always well used. Honourable senators will see that in my speech on parliamentary associations, pertaining to Russia and other places, that our experience is not always well used. However, given the sagacity and experience of Senator Harb, we may see a change marked by more aggressiveness. We must use the talent of every senator to serve one thing only.



[Translation]

He will serve Canada, that country which — to quote someone who is soon going to be leaving us — is one of the best countries in the world, and he will serve it well.

[English]

## SENATORS' STATEMENTS

### THE LATE RIGHT HONOURABLE LORD WILLIAMS OF MOSTYN

#### TRIBUTES

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I rise to remember and pay tribute to the Right Honourable Lord Williams of Mostyn, Leader of the House of Lords, Lord Privy Seal and a recent visitor to this house.

Lord Williams will be remembered for his many accomplishments as a successful barrister, Attorney-General, and then as the Leader of the House of Lords. He was heralded as the reformer of the House of Lords and will be remembered, as Tony Blair said, as a fine politician with excellent judgment.

Many in that place will remember him for his wisdom and excellent advice. However, I also recall him as the teacher. Indeed, his father was a teacher at the local village church school and later started the first Welsh-speaking state school.

Lord Williams followed in his father's footsteps. He went to public schools and won a scholarship to Queens' College, Cambridge, where he read history. He returned to North Wales and taught secondary school before going on to law.

Last year, I was honoured to organize a visit for his Lordship to my province of New Brunswick so that Lord Williams could see firsthand how Canada's only official bilingual province worked. He met with the Speaker of the New Brunswick legislature, as well as representatives of the school system and people in general, about living with two languages. The purpose of his mission was to see what information and technology could be brought back and applied in his native homeland, Wales. It was a genuine demonstration of his dedication to his first language.

Throughout his life, Lord Williams retained strong links with Wales. He became Pro-Chancellor at the University of Wales, Fellow of the University College of Wales in Aberystwyth, an Honorary Professor of the University College of North Wales, and was also President of the Welsh College of Music and Drama.

Over and above these accomplishments, Lord Williams was most noted for his strength of character. In tributes made by members of the British Parliament, including comments made by Prime Minister Tony Blair, words such as "spark, twinkle, witty and warmth" were consistently used. His contributions were plentiful, both in word and in deed, and I am sure that his presence will be greatly missed and mourned as he now surely rests with St. David, the patron of his beloved Wales.

There is an expression in Welsh which means good night, but it is also used when saying your final goodbyes when someone is dead or dying. I use it now in honour of a man who believed with all his heart in the viability of the Welsh language and promoted it throughout his life: "nos da."

**Hon. Dan Hays:** Honourable senators, I should like to join my colleague in paying tribute to the late Lord Williams of Mostyn, who left us suddenly on Saturday of an apparent heart attack at his Gloucestershire home.

[Translation]

Held by many to be a brilliant lawyer, whose logic and radical views were tempered by his quick wit, he was appointed leader of the House of Lords in June 2001. He quickly won the respect of colleagues in all parties with his congeniality, keen intellect and concern for the public good.

[English]

I, too, had the good fortune of meeting Lord Williams several times — both here in Ottawa and in his office at Westminster, on which occasion I was with the Honourable Peter Milliken. I was with him, as well, for the inauguration of Argentinean President Néstor Kirchner.

In my view, Lord Williams personified the ideal parliamentarian. He was intelligent, informed, persuasive and was possessed of a manner and a sense of humour that put one at ease while, at the same time, requiring the highest level of attention to matters at hand. Committed to reforming the House of Lords, he was also a man of great principle who believed in the need for reinforcing parliamentary review mechanisms, eradicating child abuse, promoting the Welsh language — as has been observed — and helping women achieve more equal representation in Parliament.

[Translation]

A man of great vigour and life-long enthusiasm, his passing came as a shock to those who knew and admired him. We can take comfort in remembering his remarkable and lasting contribution to his party, to his country, and particularly to Parliament.

[English]

Honourable senators, in joining with Senator Kinsella and perhaps others, I know I speak for us all in expressing heartfelt condolences to Lord Williams' wife, children, friends and parliamentary colleagues.



• (1420)

**Hon. Lorna Milne:** Honourable senators, I also rise to note the passing of a true friend of the Senate of Canada. Lord Williams of Mostyn, Leader of the Government in the British House of Lords, was only 62 when he died on Saturday. He spent a great deal of time with our Rules Committee this past spring as he tried to help us build a new code of conduct for senators.

In April, he appeared before our committee via teleconference from Westminster. There were many votes that day in the House of Lords, and all of us will remember the numerous times Lord Williams had to jump up in the middle of our teleconference and run the several hundreds yards to the other side of Westminster to cast his vote and then run back again to give us a few more minutes of his time. He left several times during the few hours that teleconference entailed, but he always returned genuinely interested in providing us with whatever help he could.

Lord Williams enjoyed his appearance in April so much that he insisted on coming to Canada in June to help us some more. We were more than happy to receive him. I was fortunate to have the opportunity to host him for dinner when he arrived. In those informal hours that we shared over the dinner table, he showed himself to be a remarkable man. He was absolutely insistent on finding the most Canadian dish on the menu, and if memory serves me, he ordered wild bison that night.

The discussion ranged from the inability of George W. Bush to communicate with Cuba, despite the fact that it was Nixon who first opened U.S. communications in China, to Lord Williams' off the cuff impersonation of Michael Jackson, which I will never forget.

His personal appearance before our committee was equally impressive. As the architect of the new ethics scheme in the House of Lords, he was able to provide a wealth of knowledge and insight, both of which had a great impact on our study.

He was also extremely well versed in what goes on here in Canada and was able to easily discuss how the differences in our two chambers would lead to different regimes. Indeed, it was a masterful performance.

In his remarks on the death of Lord Williams of Mostyn, British Prime Minister Tony Blair described him as "A superb and entertaining speaker, he used his wit and general humour time and time again to diffuse difficult situations in the Lords."

Those of us who met him this spring saw a great deal of that sharp wit and humour and are not at all surprised by the respect that he was able to command in Westminster. He will be truly missed by his Canadian friends as well.

## THE RIGHTS OF THE METIS AS DISTINCT ABORIGINAL PEOPLE

### SUPREME COURT JUDGMENT

**Hon. Serge Joyal:** Honourable senators, last Friday, September 19, will remain a landmark day in the history of Aboriginal peoples of Canada. The Supreme Court, in a unanimous decision

of nine judges, recognized that the Metis people are a distinct Aboriginal nation with the constitutional right to hunt for food.

For the first time, 21 years after the proclamation of the new Constitution in 1982, the 250 Metis communities that exist in Ontario, the Prairies, British Columbia and the Northwest Territories, representing approximately 300,000 Metis, were recognized as being on par with the other Aboriginal people. In other words, there is no hierarchy of Aboriginal rights. Native Indian people, Metis people, and Inuit people stand together at par.

While the judgment recognized specifically the Metis constitutional hunting rights for food near Sault Ste. Marie, the unanimous court decision does not impose any limits on future rights Metis can claim, be it on lands, natural resources or self-government.

This is a major breakthrough that will change Canadian history. Indeed, the court established three criteria to define who has the right to claim to be recognized as a Metis.

[Translation]

Relegated so long to historical limbo, and seen as neither wholly Aboriginal nor wholly European in ancestry, the Metis were in a way the pariahs of our founding peoples.

Rejected by both groups, and condemned to cultural anonymity, their rebellion against the government in the 19th century, under Louis Riel, in order to obtain recognition of their right to land on which to live and to hunt, could not be resolved by an appeal to ancestral rights or by sheer force.

[English]

Today, Metis people, those descendants of mixed blood — Indians and French explorers or Scottish fur traders or others — are full, distinctive, rights-bearing people. Their integral practices are entitled to constitutional protection. When we included the Metis in 1982 in the Constitution as a distinctive Aboriginal people, we were looking to set the framework for bringing back to them their identity and pride and the opportunity to play a significant role in the diverse Canadian society.

Let us hail Mr. Steve Powley, a Metis from Sault Ste. Marie, who fought in court for 10 years for the rights of his people against the Governments of Canada, Ontario, Quebec, Manitoba, Saskatchewan, Alberta, British Columbia, and Newfoundland and Labrador. All these governments intervened in the Supreme Court case to deny the Metis their full constitutional protection, even though section 35 of the Constitution gave them full recognition as Aboriginal people.

This decision opens a new chapter in Canadian history — a positive one — that should be characterized, let us hope, by negotiation in good faith, resolution of legitimate claims and the full exercise by the federal government of its fiduciary role of the constitutional rights of the Metis in Canada.



**Hon. Thelma J. Chalifoux:** Honourable senators, Friday was a day for great celebration for the Metis nation of Canada. Our past leaders have been negotiating, fighting and struggling for over 100 years to have our nation and our people recognized by all Canadians as a separate, distinct nation of Aboriginal peoples.

Thanks to Louis Riel's provisional government, the Manitoba Act was passed. If honourable senators read that act, they will find that it is a treaty between Canada and the Metis nation of Western Canada.

In 1982, Harry Daniels, past president of the Metis Native Council of Canada, won the fight to have the Metis included in the Constitution as an Aboriginal nation distinct to Canada. On March 2, 1992, Yvon Dumont, the leader of the Metis, won a Supreme Court of Canada wherein they recognized that the Metis nation is a legitimate Aboriginal nation of Canada.

Mr. Steve Powley now joins the ranks of all these past great Metis leaders in successfully winning the case that our people do have the right to hunt and fish. My family no longer has to hide the food it has obtained for our family's well-being.

It truly is a great day. The Metis team that fought this case are among the best and most talented of our nation and of Canada. Congratulations to all of them. Another battle has been won for the Metis nation. It is only too bad that it has to be fought in the courts rather than in Parliament.

[Translation]

## ROUTINE PROCEEDINGS

### THE ESTIMATES 2003-04

#### SUPPLEMENTARY ESTIMATES (A) TABLED

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I have the honour to table in both official languages the Supplementary Estimates (A) 2003-04, for the fiscal year ending March 31, 2004.

#### NOTICE OF MOTION TO AUTHORIZE NATIONAL FINANCE COMMITTEE TO STUDY SUPPLEMENTARY ESTIMATES (A)

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That the Standing Senate Committee on National Finance be authorized to examine and report upon the expenditures set out in the Supplementary Estimates (A) for the fiscal year ending March 31, 2004.

• (1430)

[English]

## QUESTION PERIOD

### AGRICULTURE AND AGRI-FOOD

#### BOVINE SPONGIFORM ENCEPHALOPATHY— EFFECT ON PRICING OF OLDER SLAUGHTER COWS

**Hon. Donald H. Oliver:** Honourable senators, my question is to the Leader of the Government in the Senate and it is about BSE. I have a few questions that relate to topics raised at Monday's meeting between the federal and the provincial agricultural ministers.

First, there is the issue of the reduced price that cattle producers are getting for older breeding or slaughter cows, which generally make up approximately 10 per cent of a producer's total herd. The value of these animals has dropped even further than the value of the finished animals or the feeder animals that go into the feedlots. This has caused more difficulties for producers than those with other classes of cattle. Such animals would normally go for slaughter and fetch anywhere from between \$700 to \$1,000 a head. However, these cows are now bringing in about \$200, if a producer can find a market for them. In fact, there are some reports that such animals are fetching as little as \$50.

Can the Leader of the Government in the Senate address this issue of older slaughter cows from the perspective of whether any additional compensation will be provided to cattle producers? If not, could she please give us her government's rationale?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, the honourable senator has asked a question which, of course, the government is pleased to address this afternoon. The BSE Recovery Program that was provided to producers across Canada has paid out some \$500 million in assistance since June. Since that compensation program was announced, we now know that the U.S. border has been opened to boneless beef. Additional assistance for cattle producers is available through transitional funding and business risk management programming under the new agricultural policy framework, and we hope that shortly all provinces will be on board.

#### BOVINE SPONGIFORM ENCEPHALOPATHY— COMPENSATION TO MANITOBA FARMERS

**Hon. Donald H. Oliver:** Honourable senators, I thank the honourable minister for the response. In her response, she referred to the \$500 million paid out in compensation. The minister hails from the province of Manitoba. I wonder if she can address one complaint that the Manitoba government has with respect to the distribution of the federal BSE-related compensation. According to the Manitoba government, there has been an unfair distribution of federal dollars designed and addressed to the BSE crisis. Manitoba's agriculture minister makes the claim that "Manitoba got less than 2 per cent" of the BSE-related funds "even though it represents about 11 per cent of this industry."

Put in other terms, of the \$500 million that the minister just spoke about in terms of emergency aid, Manitoba received only \$6 million. According to the Manitoba government, the province's share should have been closer to \$33 million. What response does the Leader of the Government in the Senate have for this apparent inappropriate amount of money?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, as I explained last week in this chamber, Manitoba and, to some degree, Saskatchewan work at a real disadvantage with respect to cattle and the unfortunate BSE experience because most of the farmers do not ship cattle that has been slaughtered. They ship primarily live cattle across the border. As the honourable senator well knows, live cattle has still not been allowed entry. The agreement signed by the federal government and all of the provinces, including the Province of Manitoba, leaves the administration of this program in the hands of cattle producers. They administer the program, and I think the producers in Manitoba and Saskatchewan have rightful claim against their association for not adequately representing them.

### VETERANS AFFAIRS

#### EXPENSES OF MEMBER OF VETERANS REVIEW AND APPEAL BOARD

**Hon. Marjory LeBreton:** Honourable senators, my question is for the Leader of the Government in the Senate. Last Wednesday, two of my colleagues in the other place asked questions concerning veterans. The first, from Ms. Elsie Wayne, concerned cutbacks to the Veterans Independence Program, where the widows of those who have served our country so well will be abandoned in an effort to save \$13 million. Even though this government routinely wastes money on such things as the gun registry fiasco, the HRDC boondoggle and the sponsorship scandal, fiscal restraint was the reason given for the cutbacks.

The second question, from Gerald Keddy, MP for South Shore, concerned the expenses of Denise Tremblay, a member of the Veterans Review and Appeal Board and the Prime Minister's former constituency secretary in Saint-Maurice, Quebec. She has spent more than \$158,000 on personal expenses. Mr. Keddy asked:

How does the Prime Minister justify these extravagant expenses when widows are refused less than \$100 a month?

The parliamentary secretary to the Minister of Veterans replied:

Mr. Speaker, that is an excellent question. I am afraid I do not have an excellent answer, but I will get back to the member as soon as I possibly can.

As the government leader is usually briefed on questions that have been asked in the other place, could she advise the Senate as to whether the government has come up with an answer that would justify these extravagant expenses by a member of the Veterans Review and Appeal Board at the same time when widows are refused less than \$100 per month, money that would typically keep them living within the confines of their own homes?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I am pleased to answer both questions by the honourable senator, but let me begin by indicating that her information is not correct. Rather than introducing cutbacks, the Government of Canada has committed some \$65 million over the next five years to more than 10,000 survivors who will retain lifetime housekeeping and ground maintenance services after the veteran's death. There has not been a cutback; there has been a massive increase.

With respect to Madam Tremblay, she was first appointed to the Veterans Review and Appeal Board effective July 2, 2001. The nature of her work requires her to conduct review level hearings at various locations across the country to hear appeals for disability pension benefits from active regular force members. The expenses cited by the member reflect the total travel expenses incurred by Madam Tremblay for the period from her initial appointment until August 2003, a period of 26 months. Like all members of the board, she is required to conduct those hearings where the hearing is slated to be held.

### HERITAGE

#### EXPENSES OF EXECUTIVE ASSISTANT TO MINISTER

**Hon. Marjory LeBreton:** Honourable senators, I have a supplementary question along the same lines about excessive expenses. Last week, we also learned about the dining habits of Charles Boyer, former executive assistant to Minister Sheila Copps. He managed to spend \$31,000 over two years on dining and hospitality, all of it approved by the minister. Contrary to Treasury Board guidelines, these expenses were reimbursed, even though Mr. Boyer had not given the names of those he was entertaining. Since she obviously has these prepared answers, could the Leader of the Government advise the Senate as to how it came to pass that this individual could be allowed to run up \$31,000 in restaurant bills over a two-year period, all with the blessing and the knowledge of a minister of the Crown, in a manner contrary to Treasury Board guidelines?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, an investigation is going on in the department to ensure Mr. Boyer's expenses were appropriate, and he himself has indicated that if there are any expenses deemed to be inappropriate, he will pay them back with interest.

**Senator LeBreton:** Honourable senators, since the leader is offering to get this information, one of the bills was incurred at 10:30 p.m. on New Year's Eve in the amount of \$209. This story has been in the news since last week, so presumably the government leader has been well briefed on this matter. Could the leader advise the Senate as to exactly what government business Mr. Boyer was conducting at 10:30 on New Year's Eve, and will the government insist that he either provides the names of his guests and an explanation for the business conducted, or repay, as she says he will do, the money to the taxpayers?



**Senator Carstairs:** Honourable senators, I already answered that question. All of his expenses are being reviewed and, if any of them are considered to be inappropriate, he has agreed to pay them back with interest.

• (1440)

## TREASURY BOARD

### REVIEW OF EXPENSE ACCOUNTS

**Hon. Marcel Prud'homme:** Honourable senators, I have a supplementary question. I have known Mr. Boyer for quite some time. He started as an intern in my office when he was young. I also know Ms. Tremblay. I do not disagree with an examination of expenses as of today, but to be fair, there must be a balance. The problem is that if we start a witch hunt, there will be no end to it. Why not go back to the late 1980s and 1990s and investigate everyone who had an expense account so that we have a better understanding of the accounts and not just mention two or three people? The press is happy to go hunting for information of this sort, but there should also be an examination of other people in other governments at other times who may have had expense accounts. If we do not stop this process now, there will be no end to analyzing expenses accounts.

Honourable senators, I want to be clear that I am not apologizing for any extravagant expenses of today. However, if there is to be a balance, we must consider doing a study over the last 10 years or 15 years.

**Hon. Sharon Carstairs (Leader of the Government):** The honourable senator raises an important point in that witch hunts are rarely a valuable exercise in political democracies. Having said that, it is incumbent upon anyone who spends from the public purse to spend both appropriately and wisely.

## PRIME MINISTER

### BILL ON ELECTORAL FINANCING— SOLICITING OF BANKS TO FUND GOODBYE PARTY

**Hon. W. David Angus:** Honourable senators, my question to the Leader of the Government in the Senate arises from the unseemly pitch that her party recently made to Canada's chartered banks to donate \$25,000 each to fund a goodbye party for the Prime Minister. The banks, to their credit, apparently refused. Is this not the classic double standard, given that this same Prime Minister threatened to call an election unless Bill C-24 was passed?

Could the government leader explain why, on the one hand, the Prime Minister felt it so necessary to abolish corporate donations while, on the other hand, his party felt it was quite acceptable to approach the banks for \$25,000 each to fund his bon voyage party?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, this chamber has said, with overwhelming enthusiasm, that the bill on electoral finances introduced by the Prime Minister was a step in the right direction about funding political parties in this great country of ours.

In terms of individuals wishing to contribute to a goodbye party for the Prime Minister, I personally see it as a celebration of 40 years of distinction and of distinguished service to the people of Canada.

**Some Hon. Senators:** Hear, hear!

**Senator Angus:** Honourable senators, the proof is in the pudding. My research indicates that Bill C-24 is replete with loopholes, just as the government leader has acknowledged. Could she confirm that should the Liberal Party again attempt to raise this kind of corporate money for a major Chrétien sendoff in Shawinigan in early January, at a time when Bill C-24 will then be in force, it would still be legal to approach the banks for such contributions and that it would still be legal for the banks or, for that matter, any other corporation to keep making such contributions?

**Senator Carstairs:** Honourable senators, I totally disagree with the honourable senator's assertion that I believe there are loopholes in this legislation. To the contrary, I do not believe there are loopholes in the legislation. I think it is very good legislation. However, the honourable senator is correct to some degree in saying that it does not cover every single eventuality in the operation of political parties. For example, large sums of money to be spent on nomination meetings are still allowed within this legislation. Therefore, is it good legislation? Is it absolutely perfect? Will we find reasons to make it better in the future? Time will tell.

**Senator Angus:** Honourable senators, with the ink hardly dry on this apparently important piece of legislation — with which many of my colleagues and I were in disagreement — the government is already looking for ways to circumnavigate the bill that was so dear to the heart of the PM, as it would give greater transparency to political fundraising. With all the loopholes, this bill is about as transparent as the Shawinigan affair.

## SOLICITOR GENERAL

### FIREARMS REGISTRY PROGRAM—REQUEST FOR FUNDS IN SUPPLEMENTARY ESTIMATES (A)

**Hon. Gerald J. Comeau:** Honourable senators, my question is to the minister and concerns Supplementary Estimates (A), whereby the government is asking for yet another \$10 million for the firearms program, bringing this year's running total of \$111 million. Could the leader advise why this program, which was originally supposed to cost a grand total of \$2 million, cannot live within the \$100 million that we voted for just last June, a scant three months ago?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, either the information I have is incorrect or the information my honourable friend has is incorrect, because I specifically put that question and was informed there was no new money. There is a transfer of money from one department to another department, but there is no new money in Supplementary Estimates (A).

**Senator Comeau:** Honourable senators, once the Supplementary Estimates reach the committee, we will find out how the redistribution will be done. We will be looking at whether a department is reducing its budget in order to transfer \$10 million to this program.

I should like to ask a question that revolves around the gun registry as well. Speaking in Whitehorse on May 10 about the cost of the gun registry and the way it treats the people in the North, Paul Martin said, "I do not believe that the review has gone nearly far enough. I do not think the solutions in terms of the complexity of the issue are where they should be at all. Nor do I believe that the program put down to control the costs has gone far enough."

Could the Leader of the Government in the Senate advise as to whether the Solicitor General and the Department of Justice are developing policy options that would allow the new Leader of the Liberal Party, Mr. Martin, to move quickly to control costs and to improve the way the firearms program treats northerners?

**Senator Carstairs:** Honourable senators, I indicated a transfer from one department to another. The honourable senator knows that the administration of this program was moved from the Department of Justice to the Solicitor General. That \$10-million transfer is as a result of the transfer of responsibility from one department to the other department.

At the present time, the Prime Minister of Canada is the Right Honourable Jean Chrétien.

#### FOREIGN AFFAIRS

##### UNITED STATES—PARTICIPATION IN MISSILE DEFENCE SYSTEM—REQUEST FOR UPDATE

**Hon. Douglas Roche:** Honourable senators, my question is to the Leader of the Government in the Senate. The talks between Canada and the United States concerning Canada's possible participation in the U.S.-planned ballistic missile defence system have been underway for several months with no information coming forth to enable the Canadian people to understand what is going on.

Can the minister state precisely what Canada's possible involvement will be? The minister will undoubtedly say that she cannot because the U.S. has not made a formal request, but the Canadian people, not to mention the taxpayers, are entitled to know what is now being talked of — military involvement, political support, financial costs. Will the government provide a progress report on these talks so that senators can make a judgment as to their efficacy?

**Hon. Sharon Carstairs (Leader of the Government):** As the honourable senator knows, the United States government is going ahead with its missile defence project with or without Canadian participation. The goal of our discussion with the United States is to see if there is any basis upon which Canadian participation might take place, while at the same time ensuring that our goal of protecting Canadians and preserving the essential role of NORAD in North American defence and security can be maintained. We also have taken the clear position that if this program is to lead to weaponization in space, we will not support it.

##### UNITED STATES—PARTICIPATION IN MISSILE DEFENCE SYSTEM

**Hon. Douglas Roche:** Honourable senators, does the minister not think that the Canadian people are owed at least a progress report on what is being talked about in these discussions that have gone on for several months?

In 1987, the Canadian government of the day said no to Canada's participation in what was then called the Strategic Defence Initiative Program, SDI. There were no repercussions on Canada as a result. If Canada could say no during the Cold War, why can it not say no today? What precisely would be the retributive action that the U.S. would take on Canada if Canada decided not to join the current missile defence program.

• (1450)

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I do not think it is a matter of retributory action. I do not think the United States will take any retributory action. It is an issue of whether NORAD, which has served both countries well, will continue to serve both of us well if one country goes in one direction and the other country goes in another. That is the very basis and reason for these discussions taking place.

#### JUSTICE

##### SUPREME COURT JUDGMENT ON THE METIS—CULTURAL DEFINITION TO DETERMINE ELIGIBILITY FOR ABORIGINAL CLAIMS

**Hon. Terry Stratton:** Honourable senators, my question is addressed to the Leader of the Government in the Senate.

On Friday, the Supreme Court unanimously ruled in favour of allowing a small Metis band in Ontario the right to hunt for food without licences and out of season. This ruling is expected to open the door for similar Aboriginal rights to be extended to the Metis, rights respecting federal funding, fishing and access to other natural resources, as an example.

My question is this: For the federal government's purposes, what is the current definition of "Metis"? Is "Metis" culturally defined?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, it is appropriate for the Government of Canada to study very carefully the decision made by the Supreme Court of Canada just last week. We have already heard today some enthusiastic support for that decision. However, it is a very complex decision, one that needs time to be appropriately evaluated by the Department of Justice.

The definition of the Metis people, to some degree, is up to the Metis people. However, within that judgment, there are some very clear guidelines as to what the Supreme Court thinks a Metis person is.



**Senator Stratton:** Honourable senators, the Supreme Court has given, as the honourable minister is aware, a rather narrow definition of "Metis." It defines it by community, which is rather interesting, vis-à-vis the effect of that on Bill C-6, for example.

In 2002, the Metis National Council, for example, passed a resolution stating that persons must prove their lineage to the Prairie Metis in order to be a member of the council. If that particular definition were used to determine entitlement, it would exclude the East Coast Metis and those in the North.

Could the Leader of the Government in the Senate tell us who will provide the definition of Metis that will be used to determine eligibility for Aboriginal claims?

**Senator Carstairs:** Honourable senators, I will not delve any more deeply into this because this decision is so very new, coming down just at the end of last week. The Department of Justice has not yet had time to thoroughly analyze it; as such, it would be premature to answer that kind of detailed question at this time.

**Senator Stratton:** Honourable senators, I appreciate that. However, the impact of the Supreme Court decision in question must be examined against Bill C-6, the proposed Specific Claims Resolution Act. I would hope and expect that the government will do that, and consider removing Bill C-6 or supporting substantive amendments that deal with its flaws, specifically, in the area of delay.

**Senator Carstairs:** Honourable senators, the Senate of Canada has already agreed to four amendments with respect to Bill C-6, amendments that, I believe, make substantial improvements to the bill.

## HEALTH

### CANADIAN INSTITUTES FOR HEALTH RESEARCH— FUNDING PROGRAM FOR MIDDLE LEVEL AND SENIOR RESEARCHERS

**Hon. Wilbert J. Keon:** Honourable senators, the Canadian Institutes of Health Research have recently decided to end a program that provides salary support for mid-level and senior researchers. The Canadian Medical Association Journal warns that this may fuel Canada's brain drain and sends a negative message about research funding in this country.

Our recent experiences with SARS, West Nile and mad cow disease illustrate the necessity for supporting scientific research in Canada. Could the Leader of the Government in the Senate tell us whether the federal government is concerned about the consequences of the end of this program and whether it intends to do something to ensure that research funding in Canada receives strong support, at least on a short-term basis, until the government can make some adjustments?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, as the honourable senator knows, the budget of this year gave substantial new money to the Canadian Institutes for Health

Research, CIHR. The Canadian Institutes for Health Research acts as an arm's-length body. It has made a determination in this case, and the government does not think it appropriate for it to interfere.

**Senator Keon:** Honourable senators, it is true, and the actions of the government have certainly been welcome by the research community, without question.

However, there are some problems with the way the funding rolls out, with lapsing annual appropriations. If some of these things could be adjusted, the kind of rather drastic action the CIHR has had to take could be avoided. One suggested alternative is for more funding to be made available to the Canada Research Chairs, so that the investigators involved could be carried for a while, until another adjustment of some kind is made.

Could the minister tell us if she thinks that may be possible?

**Senator Carstairs:** Honourable senators, I do not know whether it will be possible, but I will certainly raise with the Minister of Health the honourable senator's interesting suggestion.

I also wish to say that I am pleased to have learned today that the CIHR has committed \$12 million over five years to the area of palliative care research.

### PHARMACEUTICAL SALES TO PEOPLE IN UNITED STATES

**Hon. Brenda M. Robertson:** Honourable senators, in light of the prohibitive prices in their own country, Americans are increasingly buying prescription drugs from Canadian pharmacists. While it is understandable that Americans would want to purchase drugs at a cheaper price, it is important to realize that pharmacies do not have the resources to support both Canada and the United States. The Canadian Pharmacists Association warns that providing drugs to American buyers as well as Canadians may put our system under great strain and may even lead to drug and pharmacist shortages.

Could the Leader of the Government in the Senate tell us whether Health Canada is concerned about the pace at which Americans are buying pharmaceuticals from Canada and the possible effect upon our system?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, as the honourable senator knows, pharmacies are controlled under the legislation of provincial authorities. In my own province, for example, there has been a great deal of activity in launching more and more Web sites to encourage Americans to buy their pharmaceuticals in Canada, and it has become a significant business in the province of Manitoba.

I will raise the honourable senator's concerns that there may be drug shortages in Canada. That issue has not been identified before to me, but the reality is that pharmacies that are engaging in this activity are under the jurisdiction of provinces.

**Senator Robertson:** Honourable senators, the cross-border purchase of Canadian pharmaceuticals raises a number of other issues, one of the most important being the reaction of drug manufacturers. One of the world's largest drug makers, Pfizer, notified 50 Canadian pharmacies it believes are exporting to the U.S. that they will have to order drugs directly from the company and not wholesalers. Pharmacies that buy in order to resell into the U.S. will be cut off.

Although what you say about the provinces is relative and true, the federal government has a role here. Is the federal government concerned that drug manufacturers will try to slow the number of American purchases by reducing the amount of pharmaceuticals available to Canadian pharmacies and raising their prices?

**Senator Carstairs:** Honourable senators, clearly, there is a concern that some drug companies are not going to deal directly with wholesalers in Canada. Having said that, the drugs still appear to be readily accessible to Canadians, and, sadly, it is a reflection of how good a system we have and perhaps the lack of a system south of the border that so many Americans are looking to us to obtain drugs at apparently substantially less cost than they would pay for those drugs if purchased in the United States.

The honourable senator has raised an important concern, and along with the concern she raised about drug shortages, I will raise that matter with the honourable Minister of Health.

• (1500)

[Translation]

#### ANSWERS TO QUESTIONS ON THE ORDER PAPER TABLED

##### VETERANS AFFAIRS AND SECRETARY OF STATE (SCIENCE, RESEARCH AND DEVELOPMENT)— ALTERNATIVE FUELS ACT

**Hon. Fernand Robichaud (Deputy Leader of the Government)** tabled the answers to Questions Nos. 76 and 77 on the Order Paper—by Senator Kenny.

##### MINISTER OF STATE AND LEADER OF THE GOVERNMENT IN THE HOUSE OF COMMONS— CORPORATE GOVERNANCE

**Hon. Fernand Robichaud (Deputy Leader of the Government)** tabled the answer to Question No. 117 on the Order Paper—by Senator Stratton.

[English]

#### VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I should like to draw to your attention the presence in the gallery of Donald Maracle, Chief of the Mohawks of the Bay of Quinte; Roberta Jamieson, Chief of the Six Nations of the Grand River; Sharon Stinson-Henry, Chief of the Mnjikaning; and Greg Cowie, Chief of the Hiawatha of Scugog. They are the guests of the Honourable Senator Watt.

Honourable senators, please welcome them to the Senate of Canada.

**Hon. Senators:** Hear, hear!

[Translation]

## ORDERS OF THE DAY

### PUBLIC SERVICE MODERNIZATION BILL

#### THIRD READING—DEBATE ADJOURNED

**Hon. Joseph A. Day** moved the third reading of Bill C-25, to modernize employment and labour relations in the public service and to amend the Financial Administration Act and the Canadian Centre for Management Development Act and to make consequential amendments to other Acts.

He said: Honourable senators, it is my great pleasure to speak today during the third reading of Bill C-25, to modernize the public service.

As you know, this bill concerns one of this country's most precious resources, our public service. Whether they work in communities at home or abroad, public servants strive to protect the health of Canadians, improve the quality of their environment, ensure their safety and security and add to their well-being. Moreover, the public service is composed of a diverse and competent workforce, able to serve the public in both official languages. For these reasons, I am proud that the nation's lawmakers have shown remarkable leadership in their desire to ensure that this noble institution can continue to meet the changing needs of Canadians.

The last major reform of public service legislation undertaken by the Government of Canada goes back more than 35 years. Therefore, I congratulate the men and women who worked to make this legislation a reality. I know, for a fact, that the minister, the Honourable Lucienne Robillard, the former deputy minister, Ron Quail, the assistant deputy minister, Monique Boudrias, and their whole team of legal and policy experts have not spared any effort to give substance to this far-reaching bill.

[English]

Honourable senators, we have before us a bill that maintains the best of our current system and improves that which no longer serves us well. For example, the Treasury Board continues to be the principal employer of the public service. It has a new reporting responsibility to Parliament regarding human resources management in the public service. It will be reporting on an annual basis with respect to human resources.

The Public Service Commission retains its authority to appoint to and within the public service. It is contemplated that some or all of that authority will be delegated to the deputy heads, which is the term used in the legislation, or deputy ministers. The commission maintains its power to set the terms and conditions for staffing delegation to the deputy heads. In addition, the Public Service Commission retains the power to rescind that delegation if it is not being properly used.



Moreover, the Public Service Commission will have new powers to audit and monitor the public service.

Bill C-25 was developed after significant consultation with stakeholders, including deputy heads, employees, managers, federal-regional councils, youth organizations, human resource professionals, as well as bargaining agents.

Bill C-25 is balanced. It is enabling legislation. This public service modernization bill is composed —

#### POINT OF ORDER

**Hon. Anne C. Cools:** Honourable senators, I have been listening very closely to —

**The Hon. the Speaker:** Is the honourable senator rising on a point of order?

**Senator Cools:** Yes, Your Honour.

I have been listening with care to every single word that my colleague has been uttering, every single word that has been falling from his mouth. That is because Bill C-25 is quite a substantial bill and quite a substantial undertaking on the part of the minister.

I was listening with particular care because it seems that a significant consultation has been overlooked. I refer in particular to Senator Day's words a few moments ago that in the development of Bill C-25, extensive consultations have taken place with just about everyone in the country who has an interest in the bill or its subject matter.

Honourable senators, my point of order is on a very specific point. A very important person's interests are involved in this proposed bill. From what I can see, that person has not been consulted at all. I am speaking of none other than Her Majesty the Queen and her representative in Canada, the Governor General of Canada, Her Excellency Adrienne Clarkson. In particular, the interest of which I am speaking is Her Majesty's Royal Prerogative. The peculiar interest relates to her entitlement to allegiance from her citizens and her subjects.

I propose to reacquaint honourable senators with the fact that procedurally, in this chamber, it is out of order to have a matter in debate before us that touches or affects Her Majesty's Royal Prerogative without consultation and without the permission of Her Majesty.

Two years ago, in this chamber a number of us raised this very question with regard to Bill C-20, which as we all know was called the clarity bill. After several days, Senator Boudreau, who was then the Leader of the Government, finally rose in this chamber and gave the Royal Consent. I am speaking of the Royal Consent as distinct from the Royal Assent.

• (1510)

I have looked at Bill C-25. I observe, for example, in the first edition that we received, Bill C-25 prints very carefully the Royal Recommendation, which represents all the financial initiatives of

the Crown and essentially shows that the ministers of the Crown and the Crown itself take the initiative in bringing forth a proposal for an appropriation at some point in time. However, I have nowhere heard of the other consideration, which is called the Royal Consent, in which Her Majesty, through her representative, must grant permission or give leave to the chamber to debate and to consider her interest in the matter.

To buttress what I am saying, I cite section 9 of the BNA Act, 1867. I refer in particular to Part III of the BNA Act, headed "Executive Power." Section 9 states as follows:

The Executive Government and Authority of and over Canada is hereby declared to continue and be vested in the Queen.

We must remember, honourable senators, that the BNA Act did not create the Queen's authority over Canada and did not enact it. It merely declared it to be continuing because it had been in a state of existence pre-Confederation.

I am attempting to prove that the question of the allegiance that is owed by Canadians to Her Majesty also predates the BNA Act. I would submit that it predates any modern statute. I would also submit that it is a well established principle in the *lex parliamenti*, the law of Parliament, that no matter should proceed for debate in this chamber without having first secured the authority, the permission, the leave — of Her Majesty's representative in Canada.

Honourable senators must understand that Bill C-25 is attempting to change the Constitution of Canada. The Constitution of Canada is in many acts and it is quite a collection of doctrines as well. It states very clearly and upholds the principle of allegiance to the Queen. We will remember that the newest senator, Senator Harb — I will get used to calling him "senator" soon; I almost said Mr. Harb, famous member of the House of Commons for Ottawa Centre — came into this chamber barely an hour ago. He was escorted to the Table and took his oath of allegiance, as did all of us.

I submit that this is no simple matter; the oath of allegiance is no ornament. It is a profound commitment and a profound moral structure that gives us guidance as to how to conduct our affairs as parliamentarians.

Honourable senators, I have spoken on this matter many times in this chamber. To further support it, I would like to cite several statements from the *lex parliamenti* on the question of the Royal Consent. I shall cite Beauchesne's sixth edition, subparagraph 726(1):

The consent of the Sovereign (to be distinguished from the Royal Assent to Bills) is given by a Minister to bills (and occasionally amendments) affecting the prerogative...

Subparagraph 726(2) reads:

The Royal Consent is generally given at the earliest stage of debate. Its omission, when it is required, renders the proceedings on the passage of a bill null and void.

These citations refer to the earliest stage of debate. We are now at third reading. As a bill goes, that is getting pretty late in debate.

Paragraph 727(1) states:

The consent of the Crown is always necessary in matters involving the prerogatives of the Crown. This consent may be given at any stage of a bill before final passage; though in the House it is generally signified on the motion for second reading. This consent may be given by a special message or by a verbal statement by a Minister, the latter being the usual procedure in such cases. It will also be seen that a bill may be permitted to proceed to the very last stage without receiving the consent of the Crown but if it is not given at the last stage, the Speaker will refuse to put the question.

Honourable senators, there are many references, whether one cites Bourinot, Todd, Erskine May or whomever, or even if one looks to the real parliamentary authorities, who are always members of Parliament, by the way. In Canada, the great parliamentary authorities were people such as Prime Ministers Sir John A. Macdonald and R.B. Bennett, to name a few.

Honourable senators, it is very important that we understand any attempt by this chamber or by any minister to alter the relationship between the sovereign and his or her public service needs Her Majesty's consent. We used to call it "civil service." Terms such as "civil service" and "civil list" were all parliamentary terms. Many of these words get changed and lose their parliamentary meaning and significance, but it used to be "civil service." Any attempt to alter that very fundamental relationship between the public servants and sovereigns is no simple matter and cannot be done by a simple bill. It must involve Her Excellency the Governor General of Canada.

The business of oath is a blended notion in that the oath of allegiance is buttressed on the other side by the sovereign's oath, which is the coronation oath, which is made and —

**The Hon. the Speaker:** Senator Cools, I am sorry to interrupt, but I wish to draw to the attention of honourable senators that we have no rule in terms of the length of time for making a point of order or for deliberating a point of order.

**Senator Cools:** I would like to say —

**The Hon. the Speaker:** Let me interrupt because —

**Senator Cools:** With all due respect, I have the floor. He is out of order.

**Some Hon. Senators:** Order, order!

**Senator Cools:** You cannot use your office or position just to cut off a senator at whim like that.

**Some Hon. Senators:** Order, order!

**Senator Cools:** It is out of order. You do not do that.

**The Hon. the Speaker:** Under our rules, the discretion is left to the Speaker as to when he or she has heard sufficient information to feel that he or she understands the point of order. The tradition, however, is that one would not only hear from the senator raising the point of order but also from other senators who may wish to comment on it as well.

I point out that we are approaching the 14-minute mark in the point of order that Senator Cools is making. Listening carefully, some of the information she is giving me — because it is my discretion on whether there is a point of order — is repetitive. I would simply ask that she come to the conclusion of her explanation of the point of order. I will give other senators an opportunity to comment and then determine what action the Chair should take.

**Senator Cools:** Honourable senators, the rules are known by most of us. There is absolutely no rule that supports what just transpired. The rule is that no limit is set. A senator makes his or her point and then other senators join in the debate. I must remind honourable senators that the role of the Speaker of the Senate is different from that of the Speaker of the House of Commons.

**Some Hon. Senators:** Order!

• (1520)

**Senator Cools:** I am speaking about this place. Rule 18(1) does not convey that kind of authority. I was here when rule 18(1) was put into place. I am very well acquainted with the purposes for its initiation.

In any event, as I was saying, honourable senators, there is something very wrong in how Bill C-25 has endeavoured to remove and repeal the oath of allegiance. One simply cannot just obliterate the oath of allegiance as a requirement of public service for Canadians. As far as I am concerned, the bill should not move forward another inch without the government indicating to us that this matter of allegiance — which is an extremely important matter — has been discussed with Her Majesty's representative and that Her Majesty's representative has signified Royal Consent.

Honourable senators, I have also been very disturbed by what has been happening and by what I have been reading in the newspapers about Governor General Clarkson. I am a great believer, honourable senators, in this thing called our constitutional monarchy. I submit to you that one of the reasons this kind of treatment is being accorded to Her Excellency is that in the public and in the world of journalism the entire system has been diminished and those roles have been diminished. In today's community, frankly, it is safe in their minds to attack Her Excellency. In my mind, however, that is quite unacceptable.



I wanted to raise this, honourable senators, so that we understand the impact of what we are doing every time we take away a brick to dismantle what I would call the edifice of our Canadian constitutional system.

**The Hon. the Speaker:** Senator Cools, I am sorry to interrupt again, but you quoted correctly rule 18(1). I should like, for the record, to add the text of rule 18(3) to your reference, for honourable senators.

When the Speaker has been asked to decide any question of privilege or point of order he or she shall determine when sufficient argument has been adduced to decide the matter, whereupon the Speaker shall so indicate to the Senate, and continue with the item of business which had been interrupted or proceed to the next item of business, as the case may be.

I should like to do that now, honourable senators. I think I understand your point of order very well, Senator Cools, and I will give you a brief right of response.

However, if other senators wish to make a comment on this, I would invite them to do so now.

**Hon. Sharon Carstairs (Leader of the Government):** I thank honourable senators for my right to intervene in this matter.

The honourable senator clearly has concerns about the right of consent, which is an important aspect of our parliamentary system. Senator Cools raised this matter in committee as a point of order. At that time, it was not ruled in order. She is raising it again today, and it is her right to do so.

However, I think it is important to point out that Bill C-25 contains two new acts, the Public Service Labour Relations Act and the Public Service Employment Act. It also amends two other existing pieces of legislation, the Financial Administration Act and the Canadian Centre for Management Development Act.

The bill recognizes the need for the modernization of staffing and labour relations and brings practices up to date. The bill also provides for the establishment of conflict management through grievance provisions and establishes the Public Service Labour Relations Board. The Public Service Employment Act of Bill C-25 has the effect of repealing the oath of allegiance, an oath of allegiance that, for example, is not taken in the United Kingdom. It is not taken in Australia. This is the first bill in this country that would repeal it for the purpose of members of the public service.

The oath of allegiance is an area well covered by statute — not by prerogative but by statute. We have at least two examples, the Oaths of Allegiance Act and the Public Service Employment Act, which currently contains an oath requirement. There is no Royal Prerogative relating to oaths of allegiance since, quite frankly, honourable senators, earlier statutes extinguished that prerogative some time ago. Therefore, the Royal Consent is not required because Bill C-25 does not affect any Royal Prerogative.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, because a number of important procedural issues have come up in the debate so far on the point of order raised by Senator Cools, on behalf of the opposition, I want to put on the record that we concur in His Honour's interpretation of rule 18(3). It is quite right in our view. We are particularly appreciative of the procedure that the Speaker has adopted that, when a point of order is raised, although he may have heard enough on the matter, he does allow the opportunity for the opposition or other senators to be heard.

On the point of order, per se, when I looked at the Royal Consent topic as outlined in *Beauchesne's*, in the sixth edition, at page 213, paragraph 729, which has not been read. It states:

The Royal Consent to a bill is not required unless it affects the personal property of the Sovereign as distinguished from property the Sovereign may hold for her Subjects.

Perhaps the first one to be answered by His Honour is whether the civil service belongs to the Sovereign. Does the civil service belong to the Sovereign, in the sense of it being a personal property, or what indeed is the relationship of the civil service to the Sovereign? Once that question is answered, the answer will be much clearer as to whether a Royal Consent would be required.

This is an interesting question. It may be helpful for His Honour to look at pages 604, 605 of the 22nd edition of *Erskine May*. That reference contains a number of interesting points from procedural literature dealing with the Queen's consent on bills that affect the prerogative. Of course, one must first answer whether this bill affects the property or the prerogative of the Crown. If it does, then the Queen's consent is as outlined here. Also to be considered are the decisions made earlier in this House on that question.

This is a serious point of order. It does require answering some preambular questions before a decision could be rendered on whether the process is out of order. As I understand *Erskine May*, the point can be made at any time, including at third reading. There can be amendments in committee affecting the Crown or amendments at later stages affecting the Crown.

If that is helpful, we would be pleased.

**The Hon. the Speaker:** Before going to Senator Cools for final comment, do any other senators wish to make a comment on this matter?

I will give the floor to Senator Cools for a final comment.

**Senator Cools:** I thank the honourable senators for their interventions. I would clarify that the question of the Royal Prerogative that I have raised has nothing to do with the personal properties of the sovereign. Those references to property, with all due respect, are relevant to other prerogatives.

The law of the prerogative is probably the most complex of all laws; it is the least understood and the least known. That is with good reason — because the government likes to keep it all a big secret. These matters are greater secrets here, probably, than in any other Commonwealth country, and visitors from the Commonwealth are always amazed at how these instruments operate in this country.

• (1530)

I am talking about the entitlement of the sovereign Queen to allegiance. Allegiance, after all, is the tie that connects the subject to the supreme magistrate, the Queen. It is that phenomenon that allows the sovereign the prerogative to tax a person, to send them to war, to make appointments on their behalf, to confer commissions and to appoint senators. I am talking about those prerogatives and, in particular, about allegiance.

This allegiance predates statute. Senator Carstairs is totally wrong on that matter because it predates statute. Allegiance in Canada was born as a Royal grant. Remember, the Canada that we know was born by conquest. If you were to read the Articles of Capitulation, which occurred between the Marquis de Vaudreuil and Major-General Amherst, you would see that they address the issues and state clearly that these people shall become subjects of the King. Thereafter, these questions were put into statute but the statute is confirming, declaring and repeating that this was the law.

Honourable senators, I would like to address a small point. I do not know what Senator Carstairs was talking about when she said that I raised a point of order in committee. For the information of honourable senators, I raised no point of order; the chairman did not make a ruling; I did not ask for one; and I do not know what Senator Carstairs was talking about when she made such a misleading statement about my raising a point of order. I would like to make it clear that I did not raise any point of order in committee.

The fact of the matter is that we have a Constitutional monarch. In our system, the monarch is the actuating power of the Constitution. The monarch is the source from which all power is derived. One may not simply repeal the sovereign's entitlement to that allegiance or fidelity by a simple bill. If it is to be done by a bill then, as with the Royal Recommendation, under rules governing how Her Majesty relates to her Parliament, Her Majesty's representative has to be involved and has to give leave for the debate to occur. I say only that it is a part of the prerogative that sets the entire tone, the entire nature and the entire character of the cast of the public mind.

**The Hon. the Speaker:** Honourable senators, it is an important matter to be correct on and I will take it under consideration. Senator Kinsella quoted from *Erskine May* and I will quote from *Beauchesne's*, 6th Edition, page 213, section 727, which states:

It will also be seen that a bill may be permitted to proceed to the very last stage without receiving the consent of the Crown but if it is not given at the last stage, the Speaker will refuse to put the question.

This is also the subject matter of a rather lengthy ruling given on the then Bill S-20 on October 25, 2001, found at page 1487 of *Hansard*. It is clear that debate can proceed because the giving of Royal Consent is not required until the last stage. Therefore, I must deal with it before the last stage, and I will do so.

Continuing debate, Senator Day.

**Hon. Joseph A. Day:** Honourable senators, we were talking about Bill C-25, and I was just about to explain to you the various aspects of Bill C-25, which are primarily human resources related for the public service. During our hearings, various witnesses had an inclination to try to include other items within the bill. However, the decision has been made to try to keep this package of proposed legislation focused on human resource management within the public service. Bill C-25 is, however, a shell bill that includes several aspects and four major acts within it, as my colleague, Senator Carstairs, mentioned a short while ago. The proposed Public Service Labour Relations Act is one major aspect of the bill. It contains a proposed transition period when the old Public Service Staff Relations Act will be phased out. The proposed legislation will enable more constructive, cooperative labour-management relations and a healthier, more productive workplace.

The proposed new Public Service Employment Act will replace the existing Public Service Employment Act, which will be phased out. The new act will enable increased flexibility in staffing and managing the public service, with reinforced safeguards to sustain a merit-based, non-partisan public service. The new act will cover that part of the public service for which the Public Service Commission has the exclusive authority to appoint. The concept is the delegation of power from the Public Service Commission to managers so that they may manage and to ensure accountability in managing the public service.

There will be also be amendments to the Financial Administration Act, if you see fit to pass this bill. Financial Administration Act amendments will clarify roles and strengthen accountability for the institutions and individuals responsible for managing the public service. There are amendments to the Canadian Centre for Management Development Act, which will create a new area for continuing education for the public service to be called the Canada School of Public Service. It will support a more coherent training and learning atmosphere to help public servants pursue professional development and meet corporate needs. We learned just last week that second-language training would also be administered through that particular initiative.

Honourable senators, there are many clauses that deal with the transition of these four areas, to which I just referred, into the new regime.

Both Houses have studied Bill C-25 extensively. In the House of Commons, the Operations and Estimates Committee heard testimony from 54 witnesses. The Standing Senate Committee on National Finance heard testimony from 39 witnesses. We discussed all of the concerns that were brought forward.



I would now like to compliment our Chairman, Senator Murray, and all of the members of the Finance Committee.

• (1540)

During the deliberations of the Standing Senate Committee on National Finance, Minister Robillard made herself available at our first hearing. As well, after she listened to and read all of the testimony that had been given by the various witnesses, she came back again to try and direct her attention to those issues that were outstanding. That indicates the level of importance Minister Robillard has placed on this government legislation.

During her appearance last week, Minister Robillard dealt with many of the issues raised by committee members and witnesses. I would like to discuss some of those issues, specifically the protection of merit, employment equity, official languages, national area of selection, workplace-related human rights issues and the disclosure of wrongdoing in the workplace, — or as it is sometimes referred to, whistle-blowing. These were the issues raised during our hearings and in the discussions I have had with honourable senators. It is important that we discuss the issues that may leave us ill at ease.

Honourable senators, merit continues to be the cornerstone of the Public Service Employment Act. Indeed, clause 30 on page 126 of the bill states that:

Appointments by the Commission to or from within the public service shall be made on the basis of merit and must be free from political influence.

As Minister Robillard stated before the National Finance Committee last week:

By clearly defining a new approach to merit, we will be able to move away from the rigid and prescriptive procedural processes —

— processes that have developed by virtue of various court decisions in the past —

— and move towards a regime that is more supportive of our operational realities. Defining merit is not watering down merit. We are not in any way compromising on important values like non-partisanship...

Minister Robillard made it clear that in providing more flexibility to managers to hire, there was no compromising on the principle of merit. Canadians will still benefit from a competent, professional, non-partisan public service which is able to serve them in both official languages.

As regards to employment equity, honourable senators, Canadians also expect that their public service should reflect the diversity of the people it serves. Bill C-25 contains provisions to enhance the capacity of the public service to attract and hire a representative workforce. Subclause 34(1) on page 127 of the bill before us states:

For purposes of eligibility in any appointment process, other than an incumbent-based process, the Commission may determine an area of selection by establishing geographic, organizational or occupational criteria or by establishing, as a criterion, belonging to any of the designated groups within the meaning of section 3 of the *Employment Equity Act*.

That specifically provides for that right to the manager in the hiring process and to the Public Service Commission.

With respect to a national area of selection, I know that this has been a matter of discussion among honourable senators and has been an issue in both Houses of Parliament for some time. Our public service must also draw on the expertise and experience of Canadians from every part of the country. We believe that all Canadians, regardless of where they live, should have access to employment in the public service. As the minister said in her appearance before the National Finance Committee:

[Translation]

0We agree that this idea is very good in theory. The problem lies not in the principle but in its application.

[English]

We find ourselves in the position of having to balance the competing issues of accessibility, the responsible use of public funds and the speed of staffing. As we make these difficult choices, excellent progress has been made.

The concept of a national area of selection — that is, the whole country — is already being used for the purpose of hiring and staffing senior officer-level jobs, including executive positions. The national area of selection is also used for post-secondary recruitment and student recruitment programs. This is a good start on which to build.

Minister Robillard also stated her support for the Public Service Commission's four-year plan to expand the role of national area selection. On behalf of all Canadians who want to make a professional contribution to the public service of Canada, I, too, welcome this approach.

The Public Service Commission will report, on an annual basis, the progress that it is making with respect to expanding the use of national area selection. It will use computers and high technology to assist with respect to national area selection so that all Canadians will have a chance for all positions within the public service. Good progress is being made, and there is a commitment from the minister and from the Public Service Commission to continue in that direction.

[Translation]

In terms of official languages, there is another principle that is dear to Canadians and that is linguistic duality. In the preamble to the Public Service Employment Act in Bill C-25, the government reiterates its commitment to official languages. In addition to the rights granted to Canadians and public service employees under the Official Languages Act, the bill would make failure to assess a candidate in the official language of their choice a ground for complaint.

Section 16 of the Official Languages Act also provides that, regardless of the official language chosen by the employee, the tribunal must be able to understand that language without the assistance of an interpreter. I would like to reassure those who were concerned about this that the Official Languages Act will indeed apply to the new Public Service Staffing Tribunal.

[English]

Having regard to human rights, Bill C-25 accomplishes another very worthy goal in the workplace of employees. It will permit employees to have their workplace-related human rights issues dealt with in the same fashion and as efficiently as disputes over discipline, terms and conditions of employment, or staffing matters. This will make managers and bargaining agents more sensitive to human rights issues in the workplace.

Concerns have been raised in regard to the responsibility of the Canadian Human Rights Commission in relation to Bill C-25. It has been suggested that the Public Service Commission could not play the role envisaged in the bill, and only the Human Rights Commission possesses the required expertise to deal with human rights.

• (1550)

I recognize that these concerns are motivated by our common desire to preserve human rights protections for public servants. However, granting adjudicators and members of the public service staffing tribunal the authority to enforce human rights will bolster human rights protections in the workplace.

Honourable senators, Bill C-25 provides the Canadian Human Rights Commission the opportunity to play a similar role as it does now when it participates in proceedings before the court. It provides its expertise and does not get involved in the merits.

In addition, Bill C-25 does not affect the right of the Canadian Human Rights Commission to initiate proceedings on any workplace-related human rights dispute, whether it is the subject of a grievance or a complaint under Bill C-25. It will also provide the employee his or her choice of recourse. The employee would have the choice to use the right of recourse within the established workplace or to go to the Human Rights Commission.

In regard to the expertise to deal with human rights, the Supreme Court of Canada's decision in the *Parry Sound (District) Social Services Administration Board v. O.P.S.E.U., Local 324*, was reported only last week. The court stated that any concerns that the Human Rights Commission may have better expertise than a labour arbitration board are outweighed by the accessible, informal and prompt nature of the resolution of human rights disputes in the workplace. Moreover, expertise is not static and develops over time.

Labour arbitration boards have constituted a significant amount of sophisticated human rights jurisprudence over the years. A prominent example is the groundbreaking decision of the

Meiorin case — indexed as *British Columbia (Public Service Employee Relations Commission) v. BCGSEU* from the Supreme Court of Canada in 1999, which originated from a labour arbitration board.

It must also be said that Bill C-25 would provide to employees of the public service the same recourse for human rights matters as those currently enjoyed by the federally regulated private-sector employees under the Canada Labour Code.

Honourable senators, another subject that has caused concern to some honourable senators is that of whistle-blowing. Public servants should also have the right to step forward to disclose wrongdoing in the workplace and to be protected from reprisal.

I agree with Dr. Edward Keyserlingk's opinion that whistle-blowing should be removed from the context of human resources management because the kind of wrongdoing it would address is "far broader than that, far more serious than that." In his appearance before the Standing Senate Committee on National Finance, Dr. Keyserlingk recommended that whistle-blowing legislation "be stand-alone, be a statute specifically, exclusively directed to the issue of the disclosure of wrong-doing — and not attached to any other statute."

Dr. Keyserlingk was not the only witness that stated that whistle-blowing legislation should not be part of Bill C-25. The previous Auditor General, Denis Desautels, and the current Auditor General, Sheila Fraser, both expressed this view before the committee. I am satisfied that their testimony recommends a course of action that will benefit Canadians in the long run.

In her testimony before the National Finance Committee last week, Minister Robillard announced the creation of a working group to examine disclosure of wrongdoing in the workplace and to propose concrete solutions. The Public Service Integrity Officer, Dr. Keyserlingk, has agreed to sit on that working group and will be joined by other prominent Canadians. The group will deliver its report to the minister by the end of January 2004. The minister will then give the report to parliamentarians for review and recommendations, including legislative options. I believe that by taking this course of action the government can develop a uniquely Canadian model to ensure that whistle-blowers are protected. It is also my belief that the fact that the minister acted on this issue in the manner in which she has is an example of the good work that is being done by the committee in bringing forward these issues of concern.

[Translation]

That having been said, I would like to acknowledge Senator Kinsella's work on disclosure of wrongdoing. Minister Robillard also acknowledged the legislators' valuable input and pointed out that she would like the newly formed working group to take into account the work done so far.

[ Senator Day ]



In conclusion, honourable senators, I would like to remind you of what Senator Carstairs said in her speech at second reading. She said it was a balanced bill that will have profound and lasting effects on the public service and its ability to meet the needs of Canadians. She also said she was convinced that the talented and dedicated men and women of the Public Service would be up to the task.

[English]

I also wish to share with honourable senators the words of the Auditor General of Canada when she appeared before the Standing Senate Committee on National Finance last week. She sees the bill as "an improvement to the existing system," and said that "if Bill C-25 was passed, it would contribute to reforming human resources management." The Auditor General went on to state:

We are also pleased to see that the proposed legislation calls for a legislative review after a fixed period of five years. This would allow Parliament the opportunity to assess the impact of the new legislation on the public service and to propose any necessary changes or improvements. It will be critical for the government to have effective monitoring mechanisms to ensure that issues are well understood and dealt with accordingly and that sufficient data is collected for analysis in support of the five-year review.

Honourable senators will recall that the Auditor General, just a year ago, stated that the mechanism of the public service was broken and required immediate attention. She is now stating that she is pleased to see that the government has taken action with Bill C-25.

Honourable senators, Bill C-25 provides for a review in five years. This bill is an attempt at a cultural change that does require monitoring and probably will require some change in the future, once we have had an opportunity to see how it functions.

One of the great strengths of this institution, honourable senators, is that we have a long memory. Within five years, we will have before us a series of reports on human resources management, including those from the Public Service Commission and the President of the Treasury Board. From these reports, we will be able to monitor the progress of implementing the public service modernization bill and be in a position to recommend any revisions, if needed. We will be able to deal with any matters that arise from the legislation that we cannot foresee at this time.

Honourable senators, this is sound proposed legislation, which is long overdue. I ask respectfully for your support of this important bill.

• (1600)

**Hon. Willie Adams:** Will the honourable senator take a question?

**Senator Day:** I would be pleased to attempt to answer your question, senator.

**Senator Adams:** You have given a very interesting speech. However, I did not hear anything about the future of the public service, especially for Aboriginal people. During the last few years, the government has been looking to hire more native people in the public service. Currently, it sounds like they are saying that the only requirement is that employees speak English and French. If you are not bilingual, you are not hired in the public service, especially in Ottawa.

Aboriginal people have a different culture, but we are Canadian. These kinds of regulations make it very difficult for us. Perhaps the honourable senator could explain how this bill would affect Aboriginal people.

**Senator Day:** I thank the honourable senator for that question. The question of employment equity is one of the issues that was dealt with during our committee hearings and is one of the issues that I decided to deal with head on. I did speak about it in my remarks.

Clause 34 of the proposed public service modernization bill allows and provides for the commission, and therefore, by delegation, the deputy minister or the department, to apply principles of employment equity. It allows the appointment process to be opened only to members of certain designated groups in order to ensure that there is proper employment equity.

[Translation]

**Hon. Gérald J. Comeau:** Honourable senators, would Senator Day allow a question? Will the tribunal proposed in this bill have bilingual members?

**Senator Day:** Yes, section 16 of the Official Languages Act applies. That section stipulates that a court must be capable of understanding directly — not through an interpreter — the language of the person appearing before it. The tribunal will be bound by this act.

**Senator Comeau:** Each member will be a person meeting the requirements of the Official Languages Act? A person who is actually bilingual?

**Senator Day:** You asked Ms. Robillard the same question. The act says that the court and those making it up must have this capability, not each member, but the court.

**Senator Comeau:** So, if it is in the Maritimes, where members of the tribunal are likely not bilingual, what happens? What happens if I come before it as a francophone, demanding to present my case to the members in French, but they are quite simply not bilingual? Will I have to move to a region where services are available?

**Senator Day:** No. If I understand the law correctly, the tribunal in your region will have to be capable of hearing you and following the process in the language of the person before it.

**Senator Comeau:** My last question concerns the language school, which will now be subject to the bill. If I understand correctly, this school will train and upgrade the bilingual capacity of public servants. Have you given any thought to not having a training school exclusively governed by the bill, and instead using schools already in place in the communities? Public servants could attend them instead of starting a school. That way, use could be made of the expertise of teachers already in place, and public servants would also have an opportunity to speak with others from outside the public service. In other words, why send public servants to a special school when the general population goes to public schools?

**Senator Day:** That is a good idea. It is a management issue. It is not in the legislation. Ms. Robillard was asked this question in committee. She said that there are now private schools and individuals offering official language courses. Even if there are specific schools for this purpose, we are using private sector resources.

According to government members, this formula can continue but not as it currently is set out in the act. It is a management issue.

**Hon. Jean-Robert Gauthier:** Will the tribunal be bilingual? Everyone knows the governor in council receives suggestions from senior officials regarding the appointment of judges. Senator Comeau and I are asking the same question: will the tribunal, as a group, be able to hear cases in both official languages? We asked this question in committee. There is nothing in the bill to justify an affirmative answer. It tells us nothing.

It is an honest question: will the government be careful and will it remain vigilant to ensure that the members of the tribunal, as a group, can hear complainants in both official languages?

**Senator Day:** This bill concerns the public service, which is subject to section 16 of the Official Languages Act. This section stipulates, in particular, that every federal court must be able to understand the language of the parties who appear before it.

**Senator Gauthier:** We have five senior Officers of Parliament, the Auditor General of Canada, the Commissioner of Official Languages, the Human Rights Commissioner, the Privacy Commissioner and the Chief Electoral Officer.

When one of these officers speaks, Parliament should listen. The Commissioner of Official Languages told us in committee and she repeated her words to the House of Commons: "Note that there is no guarantee that the tribunal, as a group, can hear cases in English and in French."

• (1610)

That is why I proposed the amendment, which was defeated, of course, to the committee. What will the tribunal say to Canadians?

[English]

Sorry. Today we do not have a bilingual capacity. Come on!

[Translation]

I want the legislation to be clear and precise. I want a commitment from the government stating clearly that it intends to appoint to this tribunal judges who will be able to hear witnesses, complaints or grievances, without interpretation, in both official languages of our country. That is not so very complicated.

**Senator Day:** That is in the Official Languages Act. There is no need to repeat it in Bill C-25. That is the government's position.

**Senator Gauthier:** Honourable senators, the Official Languages Act does not say that a court "must". Section 16 that you have quoted is clear and precise. It deals with the right of Canadians to be heard by a judge who understands and speaks their language. Nothing in section 16 says that the court as a group must be able to do so. In the Charter of Rights and Freedoms the individual is mentioned. Section 16 of the charter deals with individual rights. There is no guarantee in Bill C-25.

[English]

**Senator Cools:** Honourable senators, I was listening with care to the honourable senator's description of the substantial upgrading of the Canadian Centre for Management Development.

**Senator Day:** It is called the Canada School for Public Service.

**Senator Cools:** That is the new name. The old name was the Canadian Centre for Management Development. I have not looked at these segments of the bill and I am not that well acquainted in a current way with some of the subject matter, but as I was listening, I recalled our Liberal colleagues' here strong objection to the setting up of that school. Many of us recall that Senator MacEachen and others, especially former ministers, put up an elaborate opposition to that proposal when Mr. Mulroney was Prime Minister. Based on what I have heard the honourable senator say, it now seems that Liberals have embraced everything that they had rejected previously. It may be that this has happened in stages and I have not noticed it, but I wonder about the old record here of debates and proceedings, when those issues were before us and were properly canvassed. I also wonder if I could have an indication of roughly how and when Liberals changed their minds.



**Senator Day:** Honourable senators, I am not certain that I could answer that question with any degree of precision. I was not here when Senator MacEachen was here, so I am not sure of what he said. However, I can tell you that Bill C-25 contains the current position, after extensive consultation, of the Government of Canada.

**Senator Carstairs:** Honourable senators, I am rising to make a correction. Earlier today, in response to Senator Cools' point of order, I indicated that she had raised the matter of the Royal Consent as a point of order before the committee and that she had been ruled out of order. She did not. The honourable senator went on to say that she had not done that. It is true that she raised a number of questions in the committee. I was given the wrong information and I want to apologize and correct the record.

[Translation]

**Hon. Lowell Murray:** Honourable senators, I will start where Senator Day and Senator Gauthier left off, that is, with the changes to Bill C-25 proposed by the Commissioner of Official Languages. I would like to point out that Ms. Adam proposed the change regarding tribunals for the very reason that a study conducted by her office in 1999 found that members of these federal tribunals, who are appointed by the Governor in Council, did not always have the required language skills. That is why she is concerned about the future and concerned that this type of provision was left out of Bill C-25. She asked the committee to make this change to Bill C-25.

She also noticed that, in the current legislation, there is a provision that requires the government to post competition notices in both official languages. This provision is also missing from the bill. She is asking us to reinstate this provision in Bill C-25.

I know that Senator Gauthier tried unsuccessfully to make these changes. I would simply say that if he or another senator returned to the charge, I would support him. There is no need to remind you of the importance of ensuring respect for bilingualism in the public service. I can appreciate the point of view expressed by the minister and by Senator Day today that these changes are not strictly necessary. We have section 16 of the Official Languages Act and we also have the Canadian Charter of Rights and Freedoms. However, honourable senators, as Senator Gauthier just reminded us, the Commissioner of Official Languages is an officer of Parliament. If she asks us to exercise an abundance of caution and to make certain changes to the bill, I do not see how we could turn down her requests. There is no political reason to refuse her request.

[English]

Let me first thank Senator Day for having given us such a good outline of this bill. I thank him also for having reported, as he did, on the activities of the Standing Senate Committee on National

Finance, of which he is the Deputy Chairman. It remains for me only to thank, first, the witnesses who came forward. We had former and presently serving public servants, the representatives of the employee unions, employee associations, eminent scholars in public administration, the present and former Auditor General of Canada, the present Commissioner of Official Languages, and so on. They were of enormous assistance to the committee in the study of this bill in a historical context from various perspectives and in-depth. I thank the senators who took part in our study. At every meeting we held, we had not only a full complement of committee members on hand but also a number of other senators who, although not members of the committee, attended, out of a keen interest and concern for these issues, to take part in our deliberations. I want to thank them for that because I sincerely say that they made a substantive and substantial contribution to our consideration of the bill.

• (1620)

Honourable senators, we all want a legal regime for the public service that enshrines, ensures, protects and enforces certain transcendent principles: integrity, transparency, non-partisanship and, most of all, the merit principle as the ultimate standard for hiring and promotion in the Canadian public service. At the same time, we all want a public service so constructed that the Government of Canada, in all its emanations, is able to serve Canadians efficiently and well. The objective is to strike the right balance between those two objectives of equity, on the one hand, and efficiency, on the other, as our old friend Senator Bolduc put it.

The question before us is this: Does this bill strike the right balance? The bad news is that there are elements in this bill — and now I am not speaking as chairman of the committee but as one senator, a member of the opposition — that tip the balance away from equity and too heavily in favour of the search for efficiency. There are elements in this bill that could compromise and even endanger the transcendent principles that I spoke of a minute ago: integrity, transparency, non-partisanship and the merit principle.

The good news is that we, as senators, can build into the bill further protection for those values and substantially lessen the possibilities of abuse that are opened by this bill without in any way compromising the important objective of efficiency and effectiveness.

My honourable friend and spokesman for the government continued to repeat: "While this bill may not be perfect, please do not consider amending it. Why, there is a review in five-years' time." My friend just promoted the review to the status of a "legislative review."

Honourable senators, a legislative review it ain't. It is a review by the government. The same bureaucracy and the same machinery that brought the bill to us will review it in five-years' time. The Government of Canada, as an institution, will review it in five years' time. What is Parliament's involvement? The government will table its report in Parliament.

It is not a legislative or parliamentary review at all. With the help of my learned friend Senator Oliver, I confirmed that point in the provisions of the bill. It is an executive review, and we will be vouchsafed a copy of the report when it is finished.

We must get this right, honourable senators. As Senator Day pointed out in his opening remarks, the last time there was a thorough overhaul of public service legislation was in 1967, 36 years ago. Prior to that, the country and the government had lived for about half a century under the legislative framework that the government of Sir Robert Borden put in place in 1918-1919. We do not get many opportunities to tackle this issue in a comprehensive way. It is important to emphasize that point if we think we will get another opportunity to correct some of the deficiencies in this bill.

For example — and it is a large matter — the core public service in recent years has been reduced by about 100,000 people. How was that done? Well, we have enough institutional memory in this place to remember it. We passed the bill that made the Department of National Revenue a non-departmental agency, likewise with Parks Canada, NAV CANADA and so forth. It has been going on for some considerable time. The core public service has been reduced.

When Professor Peter Aucoin from Dalhousie University was before us, he wondered what "Jesuitical" line of reasoning he could possibly use to explain to his students and others who may be interested that the tax collectors in the federal government are not part of the core public service. How does one explain that?

Something must be done here. The Honourable Lloyd Francis, who fits into more categories than almost anyone — a former public servant, former head of the Public Service Union, former member of Parliament, Deputy Speaker, Speaker of the House of Commons, a Ph.D. in economics and a Canadian ambassador overseas — said to us that it is a "heroic assumption" to assume that the merit principle is being protected in all these "structural heretics," as Professor Hodgetts called them.

We must find a way to bring these people back into the fold that they departed, precisely because they wanted to get out from under the constraints of the existing public service legislation.

The important thing, it seems to me, is to rebalance this legislation, to redress the balance a bit in favour of those principles and values that I was talking about. One way to do that, of course, is through incorporating into this bill whistle-blowing provisions and proper protection for whistle-blowers. Proper protection for whistle-blowers is intimately related to the values of integrity, transparency, non-partisanship and even respect for the merit principle. I do not want to exaggerate the importance of whistle-blowing provisions. I know that to a great extent the whistle is blown after the fact of wrongdoing. It is not a preventive measure, although it is fair to say that proper whistle-blowing legislation could act as a deterrent.

My honourable friend today indicated that he shares the view expressed by Dr. Keyserlingk on the basis of his experience that a

policy document, even one that is supervised by an eminent ethicist such as Dr. Keyserlingk, is not enough. Legislation is needed.

Senator Day, spokesman for the government on this bill, says that he agrees with that. However, the government refuses to commit to legislation. Madam Robillard says, "I want another study." Dr. Keyserlingk — and Senator Day has quoted him accurately — is willing to wait. I say in Dr. Keyserlingk's defence that he has not had as much experience with bureaucratic stalling, political stalling and stonewalling as some of us have had.

Honourable senators, there is quite a history to this matter. It goes back to 1993, we were reminded at committee, when Mr. Chrétien promised in a letter to Daryl Bean of the Public Service Alliance of Canada that a Liberal Chrétien government would bring in legislation to protect whistle-blowers. It has never happened.

Senator Kinsella introduced Bill S-11 here. It got first and second reading in the Senate, was approved by committee, came back to the Senate and was awaiting third reading when it was overtaken by prorogation.

Senator Kinsella has the letter that Mr. Chrétien wrote to Mr. Bean. He read it into the record. I think he can probably be persuaded to share it with all honourable senators later in this debate. Perhaps he will even try his amendment again.

• (1630)

Notwithstanding what I am sure is the minister's sincere interest and concern in finding a solution, she will not commit, because her cabinet colleagues will not let her commit, to a legislated solution. That is the reality. Who knows where she will be in a matter of a few months? Who knows whether she will be in that portfolio, some other portfolio or, indeed, in politics at all?

If you believe that whistle-blowing legislation is important to these values and principles, then we must act now. Senator Kinsella moved to have his Bill S-11, in essence, incorporated into Bill C-25. That is the way to go. If it had been done by the committee, those values would have substantially more protection than they have now and this would be a better bill. I invite Senator Kinsella to try again at third reading. I say that because we may not get a chance for a long while to deal with this matter. Bureaucratic and political stalling and stonewalling will do its work as it always does.

The same holds true for the question of human rights. Senator Day referred to it today. What is the situation here? If we want to protect the transcendent values that we think are important, if we want to ensure there is an effective recourse in case of abuse, then we have to act now. The committee received a letter from Mary Gusella, the Chairman of the Canadian Human Rights Commission. She is concerned that Bill C-25 transfers human rights adjudication in relation to the public service to a process which, to put it mildly, is limited in its capacity to fulfil that role.



She had an analysis of the bill done by Professor Ed Ratushny, one of the country's leading experts in this field. Professor Ratushny appeared before our committee. He told us that if this bill goes through without amendment we are letting ourselves in for a mess of litigation. That was his testimony. Just as we cannot simply turn a blind eye or the back of our hand, to mix metaphors, to the Commissioner of Official Languages, nor should we reject out of hand an important corrective amendment brought in by our Canadian Human Rights Commission.

The government argues it is not necessary. Perhaps Ms. Gusella and Professor Ratushny are making their proposal out of an abundance of caution. In any case, we in Parliament have to take these representations with the utmost seriousness.

Concerning this whole question of diversity, the idea that the Canadian public service ought to represent the Canadian mosaic, as one witness called it, is not provided for effectively in this legislation. When Mr. Serson was before us in June, he said the requirement to build a more representative public service should have been included in a definition of merit "because then it becomes a qualification for all positions in the public service." One of our colleagues tried an amendment in that sense at the committee. It failed. There is no reason why it should not be tried again. We may not get another opportunity for many years to deal with this point.

National area of selection is another matter that our friend, Senator Day, dealt with. I think he dismissed it too casually or, at least, he dismissed it too optimistically. He relies on the undoubted sincerity of the minister and the President of the Public Service Commission. I do not doubt their sincerity. However, this question of a national area of selection is intimately related to the values and principles I was talking about.

Many Canadians are frustrated because they cannot compete for public service jobs because they live in the wrong area of the country. Senator Ringuette, and others here and in the House of Commons, have been on top of this issue for some time. I cannot but express my admiration for the persistence with which they have pursued this matter. It is an important matter.

At the committee, Senator Callbeck told us that of the jobs in the Ottawa region, 27 per cent of them are filled from a national area of selection and 77 per cent are restricted to local applicants. That is the reality. We know, because we have been told by experts, including the President of the Public Service Commission, that the way to correct this problem is through communications technology.

Last June, Mr. Serson told us that he went to the government looking for \$37.7 million to get the Public Service Commission and its activities completely integrated into what is called Government On-Line. He asked for \$37.7 million, which is a lot of money. The public service is a big organization and it is very complex. What they gave him was \$500,000, to be shared with HRDC. HRDC spills \$500,000 at the water cooler every week. This is nuts.

Honourable senators, again, I do not doubt the sincerity of the minister, the president of the commission and those other spokespersons for the government, but national area of selection will not happen unless we give it legislative force in this bill. Otherwise, bureaucratic and political inertia will see to it

and the idea will be more honoured in the breach than the observance.

Finally, I wish to say a word on the question of merit. Senator Day correctly states that merit is not defined in the present legislation. In the present legislation there is to be selection according to merit as "defined by the Public Service Commission," supposedly on the basis of competition. However, there are provisions for exceptions to competition in the present law as prescribed by regulations of the Public Service Commission.

One of our witnesses, I believe it was Mr. Krause from the Social Science Employees Association, told us that even with that regime 42 per cent of the appointments are now made without competition. What do honourable senators think it will be in the much more flexible regime that is being introduced by Bill C-25?

We have a bill that delegates staffing authority to deputy ministers and down to the lowest management level. I do not object to that. I believe most people see the necessity of that. Merit is to be assessed by managers, according to the "essential qualifications" of the job. It is not all the qualifications but the "essential qualifications," plus a number of other more subjective considerations that the manager presumably will make up as he goes along. The manager will decide whether there will be a competition, and there is a self-reporting mechanism for him or her to own up to it.

Mr. Steve Hindle got it right. He made the obvious point that this bill is providing a wider discretion to managers to abuse the merit principle. Former Senator Bolduc told us that these provisions are an invitation for managers to adapt the job requirements to the person the manager wants to hire. That is where we are.

• (1640)

The response of the government is that it is only the requirement for competition that is being removed from the law, not the capacity for competition.

Second, they remind us, and it is correct, that the Public Service Commission will have, under Bill C-25, a more robust authority to monitor and to investigate, to impose sanctions, including, of course, the right to withdraw or to rescind a delegation they have made to a deputy head. For example, the failure to hold a competition could be interpreted in some cases as an abuse of authority and, therefore, subject to recourse and to the whole recourse process.

The House of Commons, to its great credit, put in an amendment specifically to authorize the Public Service Commission to audit the exercise by deputy ministers of their delegated authority. In other words, they do not have to wait for a complaint to do so.

Third, the government reminds us that we have this new Public Service Staffing Tribunal, which is set to be separate from the Public Service Commission, and to which public servants can have recourse. Again, of course, this is after the fact.

Honourable senators, some of us have come to the conclusion — and our friend Senator Bolduc was very pervasive in this regard — that the way to reinforce the merit principle and to ensure some proper protection for it is to re-establish in the law relative merit as the rule. Obviously, regulatory power would be required to make exceptions, but it is important in the law to re-establish relative merit as the rule.

Second, I point out that while the government speaks of powers and the added powers that will be granted to the Public Service Commission, we have to look at that undertaking; we have to look at those powers, too, on the basis of the record. The president of the Public Service Commission, Mr. Serson, told the committee that 10 years ago the Public Service Commission had 100 auditors to do the work of auditing, investigating and monitoring what was going on in all the departments of government. There were 100 auditors a decade ago; today, because of government cutbacks and budgetary restraints, the Public Service Commission has seven or eight auditors.

When you talk about the added powers and the increased ability of the commission to audit, monitor and so forth, it amounts to nothing without the resources to do the job adequately. In parentheses, I say that that brings up a whole other question that we cannot address in this bill but that we should address soon that is, the budgetary process involving all these agents of Parliament. As of now, they go cap in hand to Treasury Board. Who pays the piper calls the tune. The government is in a position to seriously control the activities of these agents of Parliament simply by holding on tightly to the purse strings. I should like to see a budgetary process somewhat analogous to the ones we have for our Senate budget and House of Commons budget. At least, we need a process in which the two Houses of Parliament are involved up front at the beginning rather than at the end of the process.

Then we have the commission, which presently has three full-time commissioners. Under Bill C-25, there will be a full-time president and an unstated number of part-timers. Let me say that a system of part-time members of the Public Service Commission is the wrong way to go. If they are part-time by definition, they are doing something else full-time. There is a great possibility of conflict of interest. At worst, there will be political partisanship and patronage involved. At best, every interest group and subgroup in the country will be demanding that they be represented on the Public Service Commission. This is not the way to go. I was struck by the fact that Minister Robillard, in explaining why we were going to one full-time commissioner and a pile of part-timers, told us that we removed some functions from the Public Service Commission, that they do not need so many commissioners. That was in one breath. In the next breath, she boasted of the added powers for monitoring and supervision that we are giving to the commission.

We must return to a situation in which we have three full-time commissioners. Again, let me applaud the House of Commons. They passed an amendment to the effect that the appointment of the president of the Public Service Commission must be made after a resolution of both Houses of Parliament. I think that is very important. It is extremely important that we restore a good and tight relationship between Parliament and the Public Service Commission. Minister Robillard let us know at the committee that the PSC is not really an agent of Parliament at all, that it is a hybrid. She is right, to the extent that it is involved in certain executive functions and I suppose is an agent of government in

that sense, but we have to make clear that when it comes to the merit principle the Public Service Commission is Parliament's agent and as such must be accountable to Parliament for the respect of the merit principle in the public service. This is extremely important.

We have to put an end to the situation, which has been going on too long, in which the Public Service Commission has become part of the government apparatus. For many years now there has been a revolving door there. Commissioners who are supposed to be appointed for 10 years come from jobs in the federal bureaucracy over to the Public Service Commission, spend a few years there, and come out again and take jobs as assistant deputy ministers and deputy ministers. They are regarded as part of the deputy minister community. There ought to be a real separation or distance between that commission and the government. I think it is up to us in Parliament to see that that happens.

The legislation sets up another organization to which we are referring, the public service staffing tribunal, again to provide recourse. They are taking those functions away from the Public Service Commission and putting them with this new tribunal.

Someone was incautious enough to refer to this proposed new tribunal as an agent of Parliament. I looked up the provisions in the bill. Let me assure honourable senators that it is in no way to be an agent of Parliament. It is to be totally government-run. It allows for the appointment of part-timers and so forth. It does not have the structure that one would want to give a tribunal, which I think could be described as quasi-judicial.

We want to see an amendment that would make this truly an agent of Parliament. I have an amendment, which I will propose now, that would stipulate that the chair and the vice-chair would be appointed after a resolution of both Houses of Parliament, that they would report not through a minister but to Parliament directly, the way any proper agent of Parliament does, and that they would be held accountable by Parliament for their important activities.

#### MOTION IN AMENDMENT

**Hon. Lowell Murray:** I will conclude, honourable senators, by moving, seconded by Senator Oliver:

That Bill C-25 be not now read a third time but that it be amended in clause 12,

(a) on page 145, by replacing line 20, with the following:

“(5) The Governor in Council shall designate, after approval by resolution of the Senate and House of Commons,”; and

(b) on page 151, by replacing lines 20 to 31, with the following:

“110. (1) The Chairperson shall, as soon as possible after the end of each fiscal year, submit an annual report to Parliament on the activities of the Tribunal during that fiscal year.



(2) The Chairperson may, at any time, make a special report to Parliament referring to and commenting on any matter within the scope of the powers and functions of the Tribunal where, in the opinion of the Chairperson, the matter is of such urgency or importance that a report on it should not be deferred until the time provided for transmission of the next annual report of the Tribunal.”; and

(c) on page 168, by replacing line 11, with the following:

“(4) the Governor in Council shall designate, after approval by resolution of the Senate and House of Commons,”.

• (1650)

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, it would be helpful if copies of this motion in amendment were circulated. I do know that a number of senators will want to speak to this amendment, but I also know that some honourable senators, including Senator Poy, want to continue the debate. I think that would be in order.

**The Hon. the Speaker:** Senator Gauthier has a question.

[Translation]

**Hon. Jean-Robert Gauthier:** Honourable senators, when the interpreters have no copy of the motion in amendment in French, we get only the English version. Since I work mainly in French, I appreciated your reading the French.

We are no longer debating the main motion but the motion in amendment moved by Senator Murray — is that correct? The debate will be on the amendment?

[English]

**Senator Kinsella:** Honourable senators, our rules provide that we can actually have up to two amendments to a main motion at any one time. We have now one motion in amendment. Senator Poy may speak on this amendment or on the main motion. She may even advance a second amendment, which would be in order. We can have up to two amendments before we have to dispose of them.

**The Hon. the Speaker:** In response to Senator Gauthier's question, I agree that we are now debating the amendment proposed by Senator Murray and seconded by Senator Oliver. Our practice is fairly liberal in this respect in terms of content of speeches. I am not sure whether Senator Poy has an amendment. If it were a sub-amendment, that would be in order. Another amendment would not be in order until we have disposed of the one we have before us.

I now look to the chamber to see who wishes to speak, if anyone.

**Hon. Vivienne Poy:** Honourable senators, I wish to speak on the main motion. Is that all right?

**The Hon. the Speaker:** We are on the amendment, Senator Poy, but as I said in my comment, we have been fairly liberal in our understanding when we are in this situation. If a speech has been prepared, the Senate is usually patient in hearing all comments relevant to the bill.

**Hon. Marcel Prud'homme:** Honourable senators, things may become very confusing. Some senators will speak on the main motion not knowing if the amendment will carry or not. Some may speak on the amendment, as they see fit, not knowing if the sub-amendment will pass and not knowing what the outcome will be on the main motion. Even though we are liberal in our approach to each other, I wonder if we are not about to lead some of us into confusion. A speech could change according to the decision. That is why I have always been under the impression that we should stick to the rule that says we should dispose first of the sub-amendment. When we are satisfied one way or the other, we go to the amendment. When we are satisfied with that, one way or the other, we reach the main motion, which is still amendable. I am in your hands, as you see fit.

**The Hon. the Speaker:** To deal with Senator Prud'homme's point, there is no sub-amendment before us. There is only an amendment. I was trying to restate Senator Kinsella's point. I wanted to put it in my own words so that I would feel I had the understanding of senators in the chamber.

**Hon. Anne C. Cools:** Honourable senators, I want to speak to the issues that Senator Prud'homme has raised. We should be speaking to the matter that is before us. If Senator Poy wants to speak on the main motion, she should wait until the main motion comes back rather than speaking on the amendment.

In addition, there is already confusion because an amendment has been moved and none of us have copies of it. Would it be possible to have copies distributed so that when we do wrap our minds around it, we could do so with some intelligence? It would seem that that should be the first item of the day, rather than encouraging people to speak on the different questions.

**The Hon. the Speaker:** Senator Cools' point about distribution of the amendment is a good one. I believe the distribution is in progress; I am looking to the Table for a nod of agreement.

Yes, that should be done shortly.

In terms of the honourable senator's point about Senator Poy speaking, it has been my practice to be as liberal and as generous as I can in allowing senators to say what they want to say. The Honourable Senator Cools has been the beneficiary of that practice, according to me. We have many examples in this chamber of rather generous interpretation of what a senator may raise for the purposes of their speeches.

I will leave that with honourable senators. We will see what Senator Poy has to say.

**Senator Poy:** Honourable senators, I am very happy to speak to the third reading of Bill C-25, to modernize employment and labour relations in the public service. I congratulate everyone who has worked so hard on this bill. Over the years, there have been many attempts to reform and modernize the public service, but this legislation is the most comprehensive effort so far.

This bill has the potential to fulfil the commitment of the Liberal government in the 2001 Throne Speech to ensure that the public service is innovative, dynamic and reflective of the diversity of the country, as well as attracting and developing the talent needed to serve Canadians in the 21st century.

• (1700)

As the largest employer in the country, the federal public service has a significant role to play in shaping Canada's future. In order to serve the Canadian public, our public service needs to reflect the diversity of the society that it is mandated to serve. It should contribute to the cohesiveness of Canada by reflecting the diversity embodied in the three pillars of Canadian society — linguistic duality, recognition of Aboriginal peoples' rights, and multiculturalism. In addition, it needs to draw on the representation from the different regions of Canada. Finding the balance in reflecting and upholding these ideals remains the ongoing challenge of the federal public service.

The importance of a diverse public service grows in significance when we consider that immigration has transformed the face of Canada, as reflected in the 2001 census, in which Canada emerged as one of the most multicultural countries in the world, where more than 100 languages are spoken and more than 100 religions are represented. Underlying the Canadian understanding of multiculturalism is the concept of shared citizenship where our differences enrich rather than threaten our national identity.

According to HRDC studies, diversity is not only our current reality but also our future, because all of Canada's net labour growth will be accounted for by immigrants by the year 2011. As such, the public service needs to work towards fulfilling the government's responsibility to achieve workplace equity as explicitly laid out in Canada's Employment Equity Act of 1995. While progress has been made with respect to the hiring of women, Aboriginals and persons with disabilities, there remains a significant underrepresentation with respect to visible minorities. For example, according to the most recent statistics, only 3.8 per cent of executives in the public service are members of a visible minority, compared to the representation of 13.4 per cent in the general population. As a result of this slow progress, the Task Force on the Participation of Visible Minorities in the Federal Public Service was established. Three years ago, that task force produced a report entitled "Embracing Change in the Federal Public Service."

That report laid out an action plan with benchmarks for the percentage of new hires to be made up of visible minority employees within the next three to five years. Considering that 47 per cent of the public service workforce will retire in the next 10 years, and that by 2010 more than one half of the population of our major urban centres will be first-generation immigrants, this report comes at an optimal time. Immigrants and visible minorities are key components of the ongoing process of public service renewal.

There is no suggestion in the above that quotas should be applied nor that those with lesser qualifications should be hired. After all, the goal of increasing diversity is ensuring excellence in the delivery of services by increasing creativity and productivity through the widening of perspectives and by reflecting our diverse country. Instead, benchmarks provide for the hiring of a portion of the population that may be better educated than the non-immigrant population against which it is competing.

Consider that, in the year 2000, 58 per cent of working-age immigrants had a post-secondary degree at landing, compared to 43 per cent of the existing Canadian population. Therefore, benchmarks encourage the positive use of human resources that are, at present, not being fully utilized, with a great loss to Canada's productivity.

Since the task force report, there have been some very positive results. For example, since April 2000, the number of visible minorities in the public service has increased by 3,000, representing an increase of just under 40 per cent. As a result, as of March 2002, 6.8 per cent of positions were filled by visible minorities. Honourable senators will realize from those figures that we still have a long way to go towards adequate representation.

How does Bill C-25 address the need for diversity in the public service? I believe it sets the stage to further the transformation of the composition of the public service and its corporate culture. I note that the preamble to Part III makes a commitment towards the public service being representative of Canada's diversity and that several references indicate that employment equity legislation may be taken into account in hiring. These inclusions suggest that the legislation places some importance on diversity.

Bill C-25 also contains a more effective means of managing labour relations through the established of the public service labour relations board, which will provide mediation services. The new room for flexibility in hiring provided by deputy heads also bodes well for achieving the goals of employment equity because managers will be required to meet the goals laid out in the Employment Equity Act and in Bill C-25.

In addition, the Canadian Human Rights Commission and the Public Service Commission will have important independent roles in monitoring and evaluating progress to ensure diversity and equity in the public service. Therefore, diversity will be integrated into departmental human resources and business planning, and departments will be held accountable.

However, the overseeing of compliance to both the Employment Equity Act and Bill C-25 will be dependent on providing adequate resources to the independent commissions. It is also imperative that appointments to the Public Service Commission, with its importance in shaping the future public service, be representative of the population of Canada. The provision for part-time commissioners affords an ideal opportunity for expanding the representativeness of the commission.



In reference to what Senators Day, Murray and Gauthier said a little while ago, I should like to suggest one way of ensuring that Bill C-25 lives up to its promise. Five years from now, there will be a parliamentary review of this proposed legislation; however, no committee is equipped to consider how it has impacted diversity in the public service. The Senate could establish a standing committee on diversity and equity that would examine these issues in the public service as well as in the broader Canadian society. I think, given that immigrants are Canada's future and that there are many unresolved issues, such as the integration of immigrants into the workforce, long-term human resource management, accreditation and the recognition of foreign credentials, it is imperative that such a committee be established.

**Hon. Donald H. Oliver:** Would the honourable senator permit a question?

**Senator Poy:** Yes.

**Senator Oliver:** I listened with great interest to the remarks that the honourable senator made about the concept of diversity and the lack thereof in this proposed legislation, Bill C-25. As she knows, when various witnesses, including the Public Service Commission and the minister appeared before the committee, direct questions were put to them about the lack of support for visible minority initiatives in this bill. I noted in the honourable senator's remarks that she referred to a report called "Embracing Change in the Federal Public Service." The honourable senator would know that that report talked about "the one in five." In other words, in terms of new hires, one in five would be a visible minority. As the honourable senator is well aware, every federal department has failed miserably in meeting that target and has now run out of money and that nothing is currently being done to achieve that goal.

Could she first comment on that gross failure on the part of the public service?

Second, the honourable senator said that departments would have to be held accountable to ensure that there would be equality for visible minorities in hiring. Could she explain where that accountability is going to come from, and how it will take place in the public service?

• (1710)

Finally, she quoted with great approval statistics she presumably received from a department, probably Treasury Board, that the visible minorities increased by 3,000 people — an increase of 40 per cent. Could she tell us what percentage of that increase in visible minority hiring in the public service of Canada was in the Ex category — "Ex" being executive at the rank of deputy minister or ADM? What percentage, if any?

**Senator Poy:** I do not have the numbers for the executive level. The number that I quoted comes from the Public Service Commission. This is the general number that I have. I do not have any updated information in that regard.

To go back to the first question, the report — I cannot remember what it is called.

**Senator Oliver:** Embracing change.

**Senator Poy:** They were very concerned with the legislation. Although I was not part of the committee and I did not attend any of the hearings, I had meetings with people who were witnesses and they put forward their concerns to me. They feel that they can use this legislation as a base to move on. It is very important to start with something. The concept of diversity is in the legislation, even though it is not repeated throughout the legislation. Therefore, it is up to the people who are in the commission, who are in the public service, to move forward. It was presented to me that it is actually a positive step to have part-time commissioners, because it means that more people could be involved and that we could have more diversity in the public service.

As far as the audit is concerned, I questioned whether it would be a little too late if it comes afterwards and not up front. I was told, no, because it depends on who is at the top.

Honourable senators, this legislation is very important. It is not perfect, but we can never have legislation that is perfect. However, this bill is one step forward, a step in the right direction.

**Senator Oliver:** I thank the honourable senator for that response. However, where in Bill C-25 is there the mechanism to hold departments accountable to ensure that they do fulfil her wishes with respect to diversity — that is, the hiring and the promotion of visible minorities in the public service? Where in Bill C-25 is it stated that departments can be held accountable? What is the mechanism for accountability?

**Senator Poy:** I am sure the Honourable Senator Oliver knows that in a department or any organization that involves human beings, we all have failures. That is why I suggested that a standing Senate committee keep an eye on what is going on. There will always be good people and people who are not so good in any organization; it is important that someone keeps an eye on them.

It is important that Parliament keeps an eye on them, and I would like a standing Senate committee to ensure that everything is done correctly.

**Senator Cools:** I heard Senator Poy say that a Senate committee should examine these questions. However, it is my understanding that this bill just came from a Senate committee. Does that mean that the committee's examination of Bill C-25 is inadequate, or is Senator Poy suggesting that we should send the bill back to committee for more study?

**Senator Poy:** No, that is not what I meant. I think that we should establish a committee to ensure on an ongoing basis that the Public Service Commission and the public service is doing what they are supposed to do.

**Hon. Gerald J. Comeau:** Honourable senators, I should like to move the adjournment of debate, but I think I saw Senator Gauthier try to get up to ask a question. I am willing to wait for him to ask his question.

**The Hon. the Speaker:** Do you have a question, Senator Gauthier?

**Senator Gauthier:** Honourable senators, I can speak to this amendment, but I want to protect my right to speak on the main motion also. Which is it? Do I speak now or on the main motion?

**The Hon. the Speaker:** The point made earlier is a good one, and that is that the proper, strict procedure to follow is to deal with the item on the floor and only the item on the floor. I have made reference to past practice in this chamber, and that has been to be generous in allowing senators to address questions that are on the floor generally, as opposed to specifically.

That is where we are, honourable senators. It may be that this matter should be referred to the Speaker's advisory committee to see if we want a more strict interpretation of the rules. However, I do not think we should change the practice of the Senate at this moment, and that is why I said what I have said and why we have proceeded as we have.

In answer to the honourable senator's question as to whether he is entitled to speak to the amendment and the main motion, the answer is yes.

**Senator Cools:** I could take the adjournment on the motion in amendment, and perhaps Senator Comeau could take the adjournment on the main motion.

**Senator Comeau:** No, we are on the amendment.

**The Hon. the Speaker:** A matter of order — we are on the amendment of Senator Murray, seconded by Senator Oliver.

**Senator Comeau:** I move adjournment on the motion in amendment.

On motion of Senator Comeau, debate adjourned.

## SPECIFIC CLAIMS RESOLUTION BILL

### THIRD READING—MOTION IN AMENDMENT— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Robichaud, P.C., seconded by the Honourable Senator Rompkey, P.C., for the third reading of Bill C-6, to establish the Canadian Centre for the Independent Resolution of First Nations Specific Claims to provide for the filing, negotiation and resolution of specific claims and to make related amendments to other Acts, as amended,

And on the motion in amendment of the Honourable Senator Watt, seconded by the Honourable Senator Gill, that the Bill, as amended, be not now read a third time but that it be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

**Hon. Terry Stratton:** Honourable senators, I would like to speak with respect to the amendment put forward regarding Bill C-6. First, to clarify my interpretation of why this amendment was put forward, in my view it was not the intention of Senator Watt to impugn the capability of the Aboriginal Committee at all. That was not his point. Rather, he believed that there were legal implications with respect to the bill that he thought should and could be dealt with by the Standing Senate Committee on Legal and Constitutional Affairs. Having observed that committee at work on Bill C-10A and Bill C-10B, I think he saw that how they worked and dealt with things from a legal and constitutional point of view would enhance the debate on Bill C-6. I do not think it had anything to do with impugning the reputation of the Standing Senate Committee on Aboriginal Peoples whatsoever.

• (1720)

With respect to the amendment to Bill C-6, I should like to go back to the Debates of the Senate of Tuesday, September 16, 2002. Senator Austin rose and spoke. I asked him a question with respect to time. I said:

The honourable senator made a statement that the minister had to respond every six months. Is there an amendment that speaks to that assertion? My understanding was that the minister had to respond in the first six months but, thereafter, there was no end date as to when the decision had to come down. Could the honourable senator expand on that?

Senator Austin replied as follows:

Honourable senators, there is no end date as to when the minister has to decide whether to negotiate. I agree with that.

It is my impression, and I may be wrong, that every six months he would have to make some statement that he has the matter under review or consideration. I will check. If I am wrong, I will certainly come back and say so.

Senator Austin sent me a note referring me to clause 30(3) of the bill, which I will quote:

The Minister shall, at least every six months after the completion of the preparatory meetings, report to the Commission on the status of the review, the expected date of the Minister's decision and, if applicable, the reasons why more time is required than previously expected.

Honourable senators, that is with respect to the status of the review only. Thereafter, once the review has been completed and the process has started, there is no end date. In my interpretation, there is no end date. Perhaps Senator Austin disagrees, but that is my interpretation. It would be an interesting debate in the Standing Senate Committee on Legal and Constitutional Affairs to clarify this matter in that aspect.



**Hon. Jack Austin:** The honourable senator has just read my answer that there is no end date as to when the minister has to decide.

**Senator Stratton:** Honourable senators, I shall be pleased to take the honourable senator's questions at the end.

With respect to the amendment on Bill C-6, a decision late last week from the Supreme Court of Canada regarding the Metis — *R. v. Powley*. That Supreme Court of Canada decision will have a severe impact on this bill; as such, it should be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The bill deals with special claims. Lets look now at what the Supreme Court of Canada said in its decision. It gives an interpretation of the definition of "Metis."

The term "Métis" in s. 35 of the *Constitution Act, 1982* does not encompass all individuals with mixed Indian and European heritage; rather, it refers to distinctive peoples who, in addition to their mixed ancestry, developed their own customs, and recognizable group identity separate from their Indian or Inuit and European forebears. A Métis community is a group of Métis with a distinctive collective identity, living together in the same geographical area and sharing a common way of life.

Ergo, that definition has an impact on Bill C-6. The decision, in a later paragraph, goes on to read:

The verification of a claimant's membership in the relevant contemporary community is crucial, since individuals are only entitled to exercise Métis aboriginal rights by virtue of their ancestral connection to and current membership in a Métis community. Self-identification, ancestral connection, and community acceptance are factors which define Métis identity for the purpose of claiming Métis rights under s. 35. Absent formal identification, courts will have to ascertain Métis identity on a case-by-case basis taking into account the value of the community self-definition, the need for the process of identification to be objectively verifiable and the purpose of the constitutional guarantee..

Honourable senators, we are talking about communities based on history. We now have the impact of all the Metis communities across the land, including Norway House and St. Laurent, both in Manitoba, rushing to say that they have a legitimate claim under Bill C-6 and the decision of the court.

That has had, and will have, an impact on this bill because it talks about community. The Metis people have the right to come forward and try to define the Metis community. They could tie the Metis community, as they did in the Sault Ste. Marie case, back to 1850 when they had settled the community and hunted and fished from that community. It works by that definition in Manitoba.

I would argue that this decision of the Supreme Court of Canada has a severe impact on the interpretation of Bill C-6. Consequently, the amendment as put forward by Senator Watt should be approved, and the bill should be sent back to the Standing Senate Committee on Legal and Constitutional Affairs to examine the impact of the decision.

**Senator Austin:** Honourable senators, would Senator Stratton accept a question?

**Senator Stratton:** Yes, I will.

**Senator Austin:** Honourable senators, I listened with care to Senator Stratton's argument that the decision with respect to hunting rights for Metis in Ontario has some impact on Bill C-6. However, with the greatest of respect, I cannot understand the connection.

That decision is based on section 35 of the Constitution Act. Bill C-6 is based on status communities that have a land base and have entered into treaties and/or agreements with the Crown. The question with respect to the specific claims is whether the Crown is in derogation of some legal obligation.

The case of the Metis and the question of what is their constitutional right have nothing to do with specific claims whatever. Perhaps Senator Stratton could link the two more clearly, because I missed the connection.

**Senator Stratton:** Honourable senators, it is for that exact reason that I should like the bill go to the Standing Senate Committee on Legal and Constitutional Affairs. I do not think that the honourable senator is necessarily right. The impact on Bill C-6 is severe as a result of the decision of the Supreme Court of Canada. Send the bill to Standing Senate Committee on Legal and Constitutional Affairs. The committee will look at the issue and decide whether the Supreme Court decision has any impact at all on the bill.

• (1730)

**Senator Austin:** Honourable senators, the Standing Senate Committee on Legal and Constitutional Affairs certainly is there to deal with issues within its mandate, which includes constitutional affairs. However, when it comes to legal advice, every standing Senate committee has legal advice in terms of legislation that is in front of it. In the case of the Aboriginal Committee, we had the advice of lawyers and constitutional experts, and the issues were debated and fully settled. Quite frankly, we may disagree, and we obviously do, but as I have said in the Senate before regarding the effect of moving this bill for some unstated legal advice from the Standing Senate Committee on Legal and Constitutional Affairs, what is the legal question? I have not had the legal question framed. In any event, the consequence would be to vote non-confidence in the work of the Standing Senate Committee on Aboriginal Peoples, and I do not believe that the report of that committee justifies that vote of non-confidence or even the amendment by Senator Watt. I believe it is entirely lacking in respect for the work of the committee.

**Senator Stratton:** I believe, honourable senators, that that is an inappropriate comment. I attended that committee and saw the work that was done. I made comments at the beginning of my statement on what I felt Senator Watt's interpretation was, and he did not mean or intend to demean the work of the committee at all. The honourable senator knows that. To deign to demean your own member is rather reprehensible.

I am not a lawyer, but I suggest that this question as to the result of the Powley decision should go to the Legal and Constitutional Affairs Committee, where we should hear from the Aboriginal lawyers as to what their position is, not yours.

**Senator Austin:** On the contrary. I am the sponsor of this bill and I have every right to defend this legislation. I am not demeaning Senator Watt; I am demeaning the impact of the amendment. I believe, contrary to my honourable friend, that the amendment is a gratuitous criticism of the work of the standing committee. I would be very interested to hear the legal question that would be put to the Standing Senate Committee on Legal and Constitutional Affairs. I have yet to know what that question is.

**Senator Stratton:** The Supreme Court decision.

**Senator Austin:** There is no linkage whatever in law between the two and, if there is a linkage, I would like to hear an argument for it.

**Senator Stratton:** That is your opinion, and I disagree with your opinion.

**Senator Austin:** I would ask our colleagues now to decide which of the two opinions they would like to follow.

**Hon. Eymard G. Corbin:** Honourable senators, if there are other questions, we will listen to them.

Honourable senators, I have no fight with anyone. I will not pull personalities into this issue. I do not think this is the place for it.

This whole matter is fundamentally important.

[Translation]

When I see my three Aboriginal colleagues, Senators Watt, Adams and Gill vigorously oppose the adoption at third reading of the bill, I think that these senators, who represent their people, are sending us a message.

It is not appropriate to attempt to establish a purely legal linkage with regard to this amendment. There is a much deeper problem here. I have experienced this dilemma in the past. I belong to a linguistic minority in this country. I must say that any progress we have achieved, under the Official Languages Act, was achieved with great difficulty and still is.

In order to prove the merits of our arguments, we are constantly forced to go before the courts. We waste a great deal of our time, we pay extremely high lawyers' fees, and things drag on forever. On an issue that has been debated for 400 years, we are asked to compromise and accept delays. We are told that progress is being made — but it is barely perceptible — and that we should still be happy with the way things are. I am not.

When I hear three of my colleagues, Aboriginals who represent their nation, tell us that there is a problem with this bill, I am inclined to support them. I believe that they are not being unreasonable. No matter what precedents there may or may not be to send this bill to another committee to reconsider another

aspect, constitutional or otherwise, if they feel strongly that this must be done, I will stand to support them when it comes time to vote.

[English]

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I trust this continues to be a house of debate. I had not intended participating, but I was touched by what my colleague Senator Corbin has just said. He has brought very sage counsel to this debate. I listened to the intervention by my colleague Senator Stratton. He has brought new material to the debate, in addition to the comments made by Senator Corbin.

I simply wish to add that no harm is done. I can see no harm being done by having the Senate adopt this motion in amendment and having the matter referred to the Standing Senate Committee on Legal and Constitutional Affairs. What possible harm can be done? What is the rush? This is a very serious bill affecting real people.

I was convinced by the report that was initially presented by the Aboriginal Committee. It made sense to me. However, during the debate, we have learned more. A very important circumstance has been brought to bear by the decision of the Supreme Court at the end of last week. I know there was an exchange between Senator Austin and Senator Stratton as to what in that decision bears directly on Bill C-6. Quite frankly, I do not know, but if an argument is being made that it might have direct bearing, I feel it is my obligation to hear the argument, not only the argument that is made but an analysis of what is being advanced.

The Standing Senate Committee on Legal and Constitutional Affairs, like the Aboriginal Committee, has access to legal counsel. All committees of the house have access to legal counsel, but in light of the Supreme Court's unanimous 9-0 decision, perhaps we should hear the legal reflections of those who will be arguing from the point of view of the Aboriginal peoples.

• (1740)

I was impressed by the position of the Six Nations Council, from whom I received a letter. They are very concerned with this issue. I will read part of that letter, as they think it very important that the significant questions implicit in Senator Watt's resolution should receive favourable consideration. They write:

The amendments only partially address the issues raised in the hearings both by witnesses and senators themselves —

— that is to say, the hearings of the Aboriginal Peoples Committee.

We believe the Committee is the appropriate forum to address the issues, rather than through debate in the Senate on the amendments.

To their thinking, these new questions should be canvassed by the Standing Senate Committee on Legal and Constitutional Affairs.

[ Senator Stratton ]



They further state:

The Assembly of First Nations' most recent resolutions on the subject maintain the Bill cannot be salvaged by amendments.

I assume that is in reference to the annual meeting, and, as we know, the AFN recently elected a new head.

Therefore, honourable senators, the reasonable thing to do, unless there is a time schedule to which we are not privy, is to adopt this amendment, let the Standing Senate Committee on Legal and Constitutional Affairs look at the questions that have been raised, and, very importantly, let it hear witnesses from the Assembly of First Nations, the Six Nations Council and others. We would be doing the appropriate service in our assessment of this bill. I am not talking about this bill being delayed. I say that we should let the committee get at it.

Quite frankly, honourable senators, in the amount of time we have been debating a process amendment to have another committee look at the bill, the committee could have studied it and concluded its work. We would then have a second report to help us adjudicate upon the appropriateness of Bill C-6.

I would therefore encourage honourable senators to support this motion in amendment, let the committee look at the bill and hear from the witnesses, which would, I hope, include the legal advisers of the AFN and the Six Nations Council. What harm would be done?

Perhaps Senator Austin is privy to a timeline of the parliamentary agenda. I carry, as do other honourable senators, a copy of our schedule. Our schedule has us sitting well into December. There is a great deal of parliamentary time between now and December to have the Standing Senate Committee on Legal and Constitutional Affairs do the appropriate thing, get back to us, and, if there are amendments, deal with them. I could see that all being done by the third week of October, following which the bill could be sent to the House of Commons. They have the same basic calendar as we have. They could examine the bill. I know they will take a few days off, which is appropriate for the Liberal leadership convention. We have lots of time to continue with this matter.

The rumour is that the present government is concerned that it may be facing a non-confidence vote should it come back after the Liberal leadership convention because there will be a new leader. If the present Prime Minister does not visit the Governor General at Rideau Hall after the Liberal leadership convention, some of us would find that quite inappropriate. Our tradition is that the leader of the party with the most number of seats in the House of Commons is the one that the Governor General calls upon to form a government. The leader of that party, by my assessment of what happened over the weekend, will be Mr. Paul Martin, a distinguished parliamentarian and former Minister of Finance. I am sure some of my colleagues on the other side will go to that convention as ex-officios. Quite frankly, if they all vote for Ms. Copps, Mr. Martin will still win. The reality is that the

Leader of the Liberal Party, after the leadership convention in November, will be Mr. Martin. Mr. Martin can form a new government and keep this session of Parliament. There is no need for prorogation. We can continue this session.

Perhaps the Prime Minister will not go to Rideau Hall right after the leadership convention but try to stay on until February. That would mean one of two things. Prime Minister Chrétien would need all of the leaders in the other place agree to change the parliamentary schedule, which has us sitting until December, because they have a fixed calendar unlike ours in the Senate. If they do not have that agreement, and I am not sure they would get that agreement, then the present Prime Minister would have only the option of prorogation of Parliament — the dissolution of Parliament — to avoid coming back to face the House of Commons. Why would he not want to do that? Any member of that House could rise and say: "Let us look at the reality. The party with the most seats in the House of Commons has chosen a new leader by an enormous landslide, and by our tradition, that is the person who should be asked by the Governor General to form the government. Therefore, we move a motion of non-confidence in the present government of Prime Minister Chrétien."

I should think that any influence I have with the Progressive Conservative members in the other place would gain 15 votes, at least, in support of that motion of non-confidence. However, I suspect that many of the Liberal members of Parliament who are keen, excited and enthusiastic supporters of Mr. Martin might also support that motion of non-confidence in the current Prime Minister. If that happens and should that motion pass, under our tradition, the Governor General would be obliged to do what? The Governor General would be obliged to dismiss Mr. Chrétien as the Prime Minister.

Clearly, honourable senators, some of our colleagues opposite are fearful that the House of Commons will rise in late October, and, because of that, they want to ram legislation through both Houses. I do not think we should buy into that situation. I will support my colleagues opposite, who are supporting Mr. Martin, and if he becomes leader, he should be Prime Minister when he comes back to Ottawa.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I thank the honourable senator opposite for outlining the future of the Liberal Party of Canada, but since he does not choose to be a member of our great party, I will not pay much attention to what he had to say.

In terms, however, of what we are dealing with in Bill C-6, this bill passed the House of Commons on March 18, 2003. We have had March, April, May, June and September to deal with this legislation.

• (1750)

Anyone who discusses the concept of ramming is clearly not dealing with the facts of this situation. There has been no ramming of this bill. In fact, I think we all owe a great debt of gratitude to the chair and members on both sides of the Standing Senate Committee on Aboriginal Peoples for the extremely hard work they have done on this particular piece of legislation. All of the witnesses that Senator Kinsella indicates we should hear from have been heard from. They have given their opinion on this particular matter.

We have a situation in which he indicates now and through his whip that, somehow or other, the decision that was made by the Supreme Court last week will change the whole nature of this piece of legislation. Let us read what the bill says in its title. It reads: "An Act to establish the Canadian Centre for the Independent Resolution of First Nations Specific Claims to provide for the filing, negotiation and resolution of specific claims and to make related amendments to other Acts."

How can we, by any stretch of the imagination, think that the decision made by the Supreme Court of Canada last week will have any impact on this particular piece of legislation, other than perhaps Metis claims might also be at some time in the future part of this legitimate process? That is the extent of it. There are no points of law here that need to be resolved. The Supreme Court resolved the point of law. It made some powerful statements last week, statements that I think will have an impact on our Metis people.

Honourable senators, I think it is time to vote on this bill. The committee came up with five excellent amendments to this piece of legislation. That is as a result of the hard work of the members of the committee. To send the bill to yet another committee would negate several things. The first is that we have an Aboriginal Peoples Committee, and the Senate of Canada in its wisdom chose that committee to study this particular piece of legislation. This chamber made a decision that that committee should study it. The committee did that, and did an excellent job. To "committee-shop," which I think we are trying to do here, would be unfair to the Standing Senate Committee on Aboriginal Peoples. The committee should be congratulated for its hard work, and we should defeat this amendment.

[Translation]

**Hon. Aurélien Gill:** Honourable senators, I would like to ask a question of our leader and ask her opinion on this comparison.

She mentioned that Bill C-6 had been studied by a committee of this chamber for five or six months. I would like to ask her to compare this to the Aboriginal people who have been waiting for centuries to have a say in their own country. What is six months in comparison to that?

This bill directly affects the First Nations. The First Nations have been waiting a very long time to have their say. Now there is an opportunity to hear the First Nations' concerns and complaints. Most of the witnesses who appeared before us wanted this bill abolished or significantly amended. No members of the committee can deny that. What is six months in comparison to what the Aboriginal peoples have been through? It is very little.

Honourable senators, for over 30 years in this country, Aboriginal issues have been settled by the courts. When will the politicians in both Houses of Parliament assume their responsibilities and come up with suitable solutions so that, finally, the issues will be resolved on a political and not a legal

basis? We ask that this bill be referred to the Legal Affairs Committee.

What can be preventing the leadership and the honourable senators from wanting to improve Bill C-6? What is so urgent that we cannot take two weeks more to try to clarify this issue? Why not?

I ask the leader what difference it makes to wait a little longer when comparing that to the long wait endured by the First Nations?

[English]

**Senator Carstairs:** There is no question, Senator Gill, that Aboriginal people have been working very hard on a number of issues, including how to make it easier to settle specific claims. The answer to your question is that no Aboriginal group has to use this procedure if they do not want to. This is an alternative procedure. If they do not wish to use it, they will not use it.

**Hon. Charlie Watt:** Honourable senators, as the mover of the motion, I do believe I understand my limitation.

**The Hon. the Speaker:** You can ask a question.

**Senator Watt:** I want to ask questions. That is the only avenue I believe I have.

Honourable senators, Senator Stratton made points containing new elements that have to be taken into consideration because of the ruling with regard to the hunting rights of the Metis people.

There is another issue that has been bothering me for some time, but I thought I was satisfied with the answer I received from the committee itself. This particular bill is related only to matters that have arrangements, if you want to call it that, an old treaty. This legislation is geared to that particular purpose. The senator who sponsored this particular bill made a pretty scary statement a minute ago with regard to agreements that have been signed with the Crown, treaties and things of that nature. I asked questions in the committee as to whether this applies to the modern treaty agreements, of which I am a signatory. I know from time to time when there is an absence of legal interpretation of a modern treaty, the legal people — the court, the lawyers or the politicians — tend to look for a precedent. I am worried that in this particular instance they will be looking for the precedent.

My question is to Senator Stratton. Is he satisfied, as a member of the committee, that this does not correctly apply to modern treaties? If not, this is another issue that I feel has legal and constitutional ramifications. Therefore, it only makes sense to take it to the Standing Senate Committee on Legal and Constitutional Affairs to have it fully examined. This is all I am asking for. I am not questioning the Aboriginal Committee. I am trying to go beyond that, to exhaust myself and exhaust ourselves as Aboriginal people of the resources that are available to us. Why are you denying us that opportunity? You should have that responsibility.

[ Senator Carstairs ]



**The Hon. the Speaker:** I am sorry to interrupt, honourable senators, but I wish to point out that Senator Watt's question or comment is on Senator Carstairs' time and only a question to her is in order.

It is six o'clock, honourable senators, and it is my obligation to leave the Chair and return at eight o'clock, unless there is agreement, as there sometimes is, not to see the clock.

Is it your wish, honourable senators, that we not see the clock?

• (1800)

**Hon. Anne C. Cools:** That is my understanding as well. I know that the agenda is pressing and so on, but it seems to me that this motion has been on the Order Paper for quite some time. It could have been referred to committee and the committee could have reported back a long time ago. I find the whole situation very odd. Maybe I should have paid more attention to it, but I did not.

I am under the impression that we are to have a reception for an outgoing senator as well as for new senator.

**The Hon. the Speaker:** It is six o'clock. The rule is fairly clear. I may either leave the Chair and senators will return at eight o'clock, or we could have unanimous agreement not to see the clock. I am now obliged to put the question, and I will put it only once.

Honourable senators, is it unanimously agreed that we not see the clock?

**Senator Kinsella:** Honourable senators, on behalf of the opposition, we are prepared not to see the clock if it is understood that we will complete this intervention, adjourn the matter, it and ask that all other Orders stand.

[Translation]

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, we should finish the discussion on this item. All other items on the Orders of the Day could be deferred until the next sitting of the Senate.

[English]

**Senator Kinsella:** My understanding is that Senator Carstairs will finish her speech. I know that Senator Tkachuk is ready to speak, but he will take the adjournment of the debate. Is that agreed?

**Senator Carstairs:** Agreed.

**The Hon. the Speaker:** I believe I hear agreement between the house leaders but, of course, this requires unanimous consent. Are we in agreement that Senator Carstairs will complete her speech, following which Senator Tkachuk will adjourn the debate and that all remaining items on the Order Paper shall stand? Is that agreed?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** I believe you have the floor, Senator Watt.

**Senator Watt:** Honourable senators, I was about to ask Senator Stratton a question.

**Senator Carstairs:** The honourable senator may only ask me a question at this time.

**Senator Watt:** Perhaps I do not want to ask Senator Carstairs this question because I may not like the answer she will give.

**Senator Carstairs:** Then Senator Watt must sit down.

**Senator Watt:** On reflection, I will ask Senator Carstairs the question.

Honourable senators, I believe I am correct in saying that, when there is an option to have a legal interpretation, the lawyers, the politicians, and the courts tend to consider any precedent-setting cases.

I have certainly been involved in negotiations and litigation for practically all my life.

Senator Austin has told us that this particular bill applies to those Aboriginal people who have dealings with the Crown, that is, those who have land titles that have been recognized by law, and applied to the treaties. Would the provisions of this bill, if enacted, also apply to modern treaties? I have not seen anything written in this particular bill that states it would not apply to modern treaties.

Could the honourable senator enlighten me in that area?

**Senator Carstairs:** Honourable senators, I do not really think it matters whether it applies to old treaties or modern treaties. Treaties are treaties and they must be respected. Each Aboriginal community, whether it is governed by an old treaty or by a new treaty has the option to use this process or not use this process. The choice is with the Aboriginal people and, of course, the choice belongs with the Aboriginal people.

**Senator Watt:** Honourable senators, we as Aboriginal peoples are looking for an avenue other than the legal avenue that is available, that is, going through the court system. Is this the only avenue we will have left? If we cannot sit down and try to find a peaceful solution to our grievances, where is this country headed, economically, socially and politically? I think it is very wrong for this government to try to force this option down the throats of the people. The government is saying, "You can go through the courts. If you do not want to go through the courts, you can take this one avenue." Unfortunately, honourable senators, I think our government is basically saying: "Stop bothering us." I think that is the reason they are passing this law — so it will not work.

Every witness we heard in committee told us that it will not work, and they gave their reasons for saying that. They asked us to reject the bill.

**Senator Carstairs:** Honourable senators, let me try one more time. I understand that the Aboriginal people themselves asked for another process. Negotiations took place. The result of the negotiations is this bill. The Aboriginal people themselves, I think it is fair to say, would never have given up their alternate right to go to the courts if that is what they wish to do. Through passage of this bill Aboriginal peoples will now have two choices whereas up until now, they only had one. With the passage of this bill, they will now have two choices and I think that is a good position for the Aboriginal people to be in.

**Senator Watt:** Honourable senators, once again, we always have had two choices. One of our colleagues, Senator Gill, has, for quite a number of years, been a member of commissions that have looked at these matters. He is not being heard. He is not being listened to. He tells us that the passage of this bill will not

improve the present provisions found in the act. **We were** also told that by the committee members.

On motion of Senator Tkachuk, debate adjourned.

[*Translation*]

#### BUSINESS OF THE SENATE

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I move that the Senate do now adjourn and that all remaining items on the Order Paper stand in the order in which they are today.

The Senate adjourned until Wednesday, September 24, 2003, at 1:30 p.m.



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OFFICIAL REPORT  
(HANSARD)

Wednesday, September 24, 2003

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THE HONOURABLE DAN HAYS  
SPEAKER

SEN 77203

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## THE SENATE

Wednesday, September 24, 2003

The Senate met at 1:30 p.m., the Speaker in the Chair.

Prayers.

### VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, before proceeding to Senators' Statements, I would draw to your attention the presence in our gallery of a group headed by Mr. Shams Kassim-Lakha, President of the Aga Khan University of Pakistan. He is a guest of the Honourable Senator Jaffer.

On behalf of all senators, I welcome you to the Senate of Canada.

**Hon. Senators:** Hear, hear.

### SENATORS' STATEMENTS

#### ST. FRANCIS XAVIER UNIVERSITY

##### FIFTIETH ANNIVERSARY OF CANADIAN FOOTBALL

**Hon. B. Alasdair Graham:** Honourable senators, last weekend, I had the honour of co-hosting the fiftieth anniversary of Canadian football at St. Francis Xavier University. Well over 100 former players covering the last half-century came back to relive memories, renew bonds and friendships and to replay, for yet another time, those incredible years of triumph as well as the games and seasons that were not as successful as most.

They were all heroes on the weekend. We were especially pleased to have with us as special star guests Russ Jackson, undoubtedly the greatest Canadian football player of all time, and former coach Don Loney, the man who is regarded in many circles as the father of Canadian football in Atlantic Canada. These people, honourable senators, have not only had huge individual and team successes but have also, by example, helped so many sons and grandsons with some of the great lessons of life that come from playing as a team.

The weekend activities proved to be yet another highlight in the year-long celebrations observing the 150th anniversary of the founding of St. Francis Xavier, which has already been marked by the issuance of a beautiful, new, commemorative stamp by Canada Post. I had the honour of assisting in the unveiling of the stamp in April.

For a century and a half, St. Francis Xavier has been home to extraordinary leaders who believed in the power of individuals — no matter what their state in life — to become masters in their own house.

It was in this place that Monsignor Coady began to spread his message about liberation and empowerment, giving new hope to uneducated young men and women throughout Atlantic Canada.

It is in this place that the Coady International Institute established a training centre for adult education for people from around the world. It is to this place that over 4,000 community leaders from 120 countries have come to learn about education, which brings hope to little people across the planet.

Honourable senators, I have one footnote from the weekend: Congratulations to the new University of Montreal football team, which came to town and spoiled the celebrations just a little bit by upsetting the X-Men 14-9 in the equally new Quebec-Atlantic interlocking intercollegiate football schedule.

### GOVERNOR GENERAL

#### STATE VISITS

**Hon. Donald H. Oliver:** Honourable senators, I rise to draw to your attention a letter to the editor from a distinguished Canadian, Milton Wong, Chairman of HSBC Asset Management Canada, which appeared in the weekend *National Post* by Mr. Wong is also chancellor of Simon Fraser University in Vancouver. He was one of the delegates who accompanied the Governor General in the South American tour in 2001. With all the commentaries in the media about the current state visits, it was refreshing to read a first-hand account by someone who has been there.

Mr. Wong noted that the delegates worked extremely hard for two weeks representing Canada, participating in round table discussions and debates, and challenging one another intellectually. He said the trip was about building trust with other nations and establishing the foundation for greater understanding among people of the world, and no one does this any better than our current representative, Governor General Clarkson.

Mr. Wong said they "visited universities, participated in panel discussions and met other leaders representing those countries." Mr. Wong further noted that he "counted at least 35 speeches made by Ms. Clarkson, who worked harder than anyone else and was impressively knowledgeable about the histories and cultures of the countries we were visiting." By any standards, that is impressive.

Honourable senators, I personally admire the work our Governor General does in Canada by visiting and bringing to the fore various ethnic groups that would otherwise be ignored.

Mr. Wong's letter said this trip is about "supporting intellectual discussion, global cooperation and the exchange of ideas," and "for discovering ways to make the world a better place for everyone." Mr. Wong said that he and other delegates:

... returned to Canada with a much deeper understanding of the problems and issues, the achievements and goals, the cultural identities, of the countries we visited as well as the common challenges and opportunities we share with them.

Honourable senators, that is what these state visits are all about. This year is no exception. The delegates on this trip are not just business people; they are a selection of leaders from disciplines as wide-ranging as fine arts, science and politics.

The Governor General has consistently emphasized the centrality of the North in Canada's identity, not only with Canadians here at home but while abroad on previous state visits and in discussions with foreign leaders visiting Canada. The visits to countries of the circumpolar north will further reinforce the image and understanding of Canada abroad and give strong support to the northern dimension of Canada's foreign policy.

• (1340)

Governor General Clarkson will take part in the second Quest for the Modern North seminars in the circumpolar tour. During the seminars in Iceland, panellists will exchange ideas on culture and long-term community viability. These seminars will later be available online to students undertaking circumpolar studies at a virtual university.

In conclusion, honourable senators, those who accompany Her Excellency Adrienne Clarkson will no doubt come back to Canada with a much deeper appreciation and understanding of the unique culture enjoyed by people in circumpolar nations.

Honourable senators, I am deeply honoured to be one of those Canadians able to participate in this historic dialogue.

### THE LATE DONALD DEACON, O.C.

#### TRIBUTE

**Hon. Catherine S. Callbeck:** Honourable senators, I rise to pay tribute to an outstanding Canadian, a highly respected individual and an exceptional human being. Today, I pay tribute to the life of the late Donald Deacon, who passed away on September 16. His life was filled with accomplishment, purpose, dignity and integrity.

While people have achieved much in certain fields of endeavour, Mr. Deacon achieved much in many fields. He provided exemplary service to Canada during the Second World War and was awarded the Military Cross.

He had a successful business career as chair of a Toronto brokerage firm. He went on to an illustrious political career, first in municipal politics and, later, as a Liberal member of the Ontario Legislature.

Mr. Deacon excelled in fields as varied as the military, business and politics on the great strength of his character and compassion. He earned the respect and confidence of his fellow citizens and colleagues throughout his long and active career.

[ Senator Oliver ]

He also made a significant contribution to this country in so many ways, as well as through his dedicated service as a volunteer. He served as National Commissioner of Boy Scouts of Canada. He served with the Red Cross on its national board of governors and was recognized for that service by being named Red Cross Humanitarian of the Year.

Among his many other community involvements, he served on the board of governors of Mount Allison University. He was a founding co-chair of the national Katimavik youth movement. He was a director of the national Trans Canada Trail Foundation and was the founding president of the Confederation Trail in Prince Edward Island.

For these and his many other contributions, Mr. Deacon was recently promoted to the rank of officer in the Order of Canada.

Prince Edward Island was fortunate, in that Mr. Deacon chose to retire there, although retirement hardly describes his continued and active participation in so many activities. He made an enormous impact on his adopted province, where his work was an inspiration to many.

Donald Deacon has given us a legacy of public service that will be long remembered. I extend my sincere sympathies to his wife, Florence, and to his family, by whom he will be greatly missed.

### THE RIGHTS OF THE METIS AS DISTINCT ABORIGINAL PEOPLE

#### SUPREME COURT JUDGMENT

**Hon. Gérald-A. Beaudoin:** Honourable senators, the Supreme Court of Canada, last Friday, September 19, rendered unanimously an interesting and important decision on the rights of the Metis people.

It is a landmark case.

[Translation]

The court has recognized the Metis' ancestral hunting rights for subsistence purposes.

The court concluded that section 35 of the Constitution Act, 1982, which recognizes native Amerindians' ancestral hunting, trapping, fishing and harvesting rights also allows the Metis to hunt without a licence and out of season for subsistence purposes. These, as we know, are collective rights, of which there are very few in our Constitution.

To date, the only recognition of collective rights has been for the Aboriginal peoples, and the denominational rights relating to education. Mr. Justice Bastarache, however, made reference to language rights in the *Arsenault-Cameron* case as being collective rights. That is all.

The court has established rather precise criteria for the recognition of these ancestral rights.



Minister Goodale has announced the government's intention to meet with the Metis in order to negotiate with them in good faith on the date these fundamental rights will take effect.

I am extremely pleased with the decision by the Supreme Court of Canada.

[English]

## AGA KHAN UNIVERSITY

### TWENTIETH ANNIVERSARY OF FOUNDING

**Hon. Mobina S. B. Jaffer:** Honourable senators, I rise today to pay tribute to an institution that has revolutionized post-secondary education and health services training in the developing world. The Aga Khan University was founded by His Highness the Aga Khan and chartered in 1983.

I am pleased that the president of Aga Khan University, Mr. Shamsh Kassim-Lakha, is with us today in the visitors' gallery.

At the time of its founding, His Highness the Aga Khan said the new university would draw inspiration from the great traditions of Islamic civilizations and learning, including one of the oldest universities, the Al Azhar in Cairo, founded over 1,000 years ago by His Highness' Fatimid ancestors.

It was proposed that the Aga Khan University should be a small, secular institution, international in scope, and that its distinctiveness would come from the quality of its programs, its graduates and research, and its impact on developing societies. Today, 20 years since its founding, the Aga Khan University has moved well beyond Pakistan and has established campuses on three continents, with 11 teaching sites spread over Asia, Africa and the United Kingdom.

Canadian universities and professionals have played a critical role in this success. McMaster University, McGill University and the University of Toronto have all contributed tremendously to the development of Aga Khan University.

The early establishment of the School of Nursing had special significance — to train women professionals. In developing countries, women constitute more than 80 per cent of the nurses and teachers. Women's development, through their empowerment, is a central goal of the Aga Khan Development Network, and in this respect, Aga Khan University is proud that 65 per cent of its students are women, as are more than 40 per cent of its faculty.

Nowhere is this feature more evident than at the School of Nursing, which opened in 1980 with the basic objective of enhancing the status of nursing and of women professionals. In Pakistan, nursing has not enjoyed high status, and the country has suffered chronic shortages, far in excess of those experienced even in most developing countries. In Canada, for example, there are about four nurses for every physician. In Pakistan, the ratio is reversed — about four physicians for every nurse.

Aga Khan University has succeeded in developing leaders in nursing, medicine, education and research who are equipped with modern techniques and tools but who also possess a strong sense of purpose and vision. It was in recognition of this leadership that the government of Pakistan turned to AKU to lead a national task force to assess what needs to be done to improve higher education in the country.

The motivation for His Highness to create AKU is clear in the following words:

There are those who enter the world in such poverty that they are deprived of both the means and the motivation to improve their lot. Unless they can be touched with the spark, which ignites the spirit of individual enterprise and determination, they will only sink into apathy, degradation and despair. It is for us, who are more fortunate, to provide that spark.

Honourable senators, these words are as relevant today as they were 20 years ago.

[Translation]

## ROUTINE PROCEEDINGS

### L'ASSEMBLÉE PARLEMENTAIRE DE LA FRANCOPHONIE

MEETING OF TWENTY-NINTH ANNUAL SESSION,  
JULY 6-10, 2003—REPORT TABLED

**Hon. Rose-Marie Losier-Cool:** Honourable senators, pursuant to rule 23(6), I have the honour to present to this house in both official languages the report of the Canadian section of the Assemblée parlementaire de la Francophonie, and the financial reports relating thereto, of the meeting of the Twenty-Ninth Annual Session of the APF, held in Niamey, Niger, from July 4 to July 10, 2003.

• (1350)

[English]

## FOREIGN AFFAIRS

NOTICE OF MOTION TO AUTHORIZE COMMITTEE  
TO MEET DURING ADJOURNMENT OF THE SENATE

**Hon. Peter A. Stollery:** Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That the Standing Senate Committee on Foreign Affairs, in accordance with rule 95(3)(a) of the *Rules of the Senate*, be empowered to sit on October 14 and 15, 2003, even though the Senate may then be adjourned for a period exceeding one week.

## QUESTION PERIOD

### CANADIAN INTERNATIONAL DEVELOPMENT AGENCY

#### COMPLIANCE WITH SOLE SOURCE CONTRACTUAL REGULATIONS

**Hon. A. Raynell Andreychuk:** Honourable senators, it has been reported that the managers of CIDA awarded millions of dollars in untendered contracts between 1999 and 2001, despite knowing that this violated federal regulations. Suppliers were awarded these contracts without considering the need for compliance and transparency; this from CIDA who requests others, both their own contract providers and other countries, to have a results-based management approach to project funding.

As an explanation, senior CIDA officials indicated that they knew about the rules but that they felt that they could administer things without following federal guidelines. It would seem to me that this is taking unfettered discretion to its illogical conclusion. CIDA has now indicated, through its management, that it has taken the necessary steps to rectify this situation.

In light of the fact that Canada goes around the world requesting other countries to abide by rules and that the rule of law is the essence of much of our aid giving, how can we explain to our counterparts around the world why we break our rules and why they should not break theirs?

As well, could the Leader of the Government in the Senate share with this chamber what steps CIDA has taken to ensure future compliance with federal regulations regarding sole source contracts?

**Hon. Sharon Carstairs (Leader of the Government):** I thank the honourable senator for her questions this afternoon. I regret that I have no information to provide to her because I did not know of the issue that she has identified this afternoon. I assure her that we will get on this matter immediately and provide answers to the two questions she has asked as quickly as we can.

### CITIZENSHIP AND IMMIGRATION

#### NEW RULE TO ASSESS IMMIGRANT CLAIMS UNDER CRITERIA AT TIME OF APPLICATION

**Hon. Donald H. Oliver:** Honourable senators, my question is to the Leader of the Government in the Senate. Last week, the federal government was forced to change its new immigration rules and finally allow potential immigrants to be assessed under the criteria in place when they originally applied. In announcing the change, Citizenship and Immigration Minister Denis Coderre said in a statement: "The government's clear intention has always been to treat immigrants fairly."

The truth is that Minister Coderre changed his mind only when it became clear that the government would lose a series of class action lawsuits that had been filed by victims of the department's earlier decision and who sought damages to have their applications reviewed.

Why did it take so long for the Department of Citizenship and Immigration to arrive at this decision, and why did it have to be shamed into acting following potential lawsuits by the various immigrants?

**Hon. Sharon Carstairs (Leader of the Government):** The honourable senator has indicated that the department made the decision on the basis of class action lawsuits. I would prefer to think that they responded to the interventions of many Canadians, including the honourable senator opposite who raised in this chamber on a number of occasions that he believed the system was unfair and inequitable. Certainly, those comments were made to the minister, and I would hope it was the representation of that fact rather than the threat of lawsuits that resulted in this action.

**Senator Oliver:** Honourable senators, although the minister has finally changed the rules, the potential immigrants still have to be assessed. Many of these people have been waiting a very long time already. One in particular, a mechanical engineer from Hong Kong, told the Federal Court looking into the matter last year that he has been waiting 44 months to receive an answer from a visa officer about his claim. In light of last week's decision, could the Leader of the Government in the Senate tell us if the Department of Citizenship and Immigration will hire additional staff to help deal with this backlog?

**Senator Carstairs:** As the honourable senator knows, because he has asked this question before, the Department of Citizenship and Immigration has hired additional staff. They were given the resources to do that in the last budget.

We all concur that this is a wonderful country. Many individuals would like to join us here. Unfortunately, the process often takes much longer than I, the honourable senator and others, including the Minister of Immigration, would like it to take. Quite frankly, it is based on the number of people who wish to come to this great country.

### JUSTICE

#### SUPREME COURT JUDGMENT ON THE METIS— EFFECT OF DECISION

**Hon. Gerry St. Germain:** Honourable senators, my question is also to the Leader of the Government in the Senate and relates to the landmark decision regarding the Metis. I was hoping to make a statement about it today, as I was unavoidably detained yesterday on other business.

Could the Leader of the Government in the Senate describe to this place exactly what actions the government will take in regard to this landmark decision and the Metis people?

**Hon. Sharon Carstairs (Leader of the Government):** The honourable senator asks about a decision that, as he knows, was just rendered by the Supreme Court late last week. The government and, more particularly, the Department of Justice, has undertaken to do a thorough reading and study of this particular judgment. It would be premature of me or any other minister to make a statement as to what the next stages will be.



**Senator St. Germain:** I thank the minister for her answer.

Possibly the Leader of the Government in the Senate could apprise us if there are any new events during the course of the analysis of this landmark decision.

## HERITAGE

### UNITED KINGDOM—NAMGIS REQUEST FOR RETURN OF CEREMONIAL MASK

**Hon. Gerry. St. Germain:** Honourable senators, my supplementary question relates to another Aboriginal issue. The Namgis, a small native band in British Columbia, has asked the British museum in London to return to them a wooden ceremonial mask that is currently being kept in storage there. Over the past 35 years, the Namgis have worked hard to retrieve many of their ceremonial artifacts that are scattered around Canada and the world. The British museum has refused to return the mask, saying it has a legal duty to hold it in trust and make it available to scholars. This particular museum has also refused to restore the Elgin Marbles to Greece before the 2004 Olympics. The Canadian Parliament has adopted motions calling on the museum to return the marbles.

Will the Government of Canada make a special representation on behalf of the Namgis nation of British Columbia and request that their mask be returned to its rightful place?

**Hon. Sharon Carstairs (Leader of the Government):** As the honourable senator knows, there are many artifacts of many people in many countries that are, in my view, unfortunately located in countries other than the one in which they should reside. The question the honourable senator asks is specific. I will certainly, on his behalf, make representations to the Minister of Heritage, who would be responsible for this matter, and let her know how strongly the honourable senator feels about the restoration of this piece of Namgis history.

## HEALTH

### REVIEW OF PRESCRIPTION DRUG ADVERTISING POLICY

**Hon. Brenda M. Robertson:** Honourable senators, as part of a review of the Food and Drugs Act and other health statutes, Health Canada is currently considering lifting the ban against advertising prescription drugs in broadcast and print media.

Currently, this practice is only legal in Canada if the ads do not say what conditions the drug treats. If the policy is changed, Canada will join the United States and New Zealand as the only industrialized countries that allow prescription drug advertising.

When does Health Canada expect to announce the outcome of its review of this policy?

**Hon. Sharon Carstairs (Leader of the Government):** As the honourable senator knows, no decision has been made in this matter.

• (1400)

As regards to the study being conducted by Health Canada, one can only assume that it will be released when it is completed.

**Senator Robertson:** Honourable senators, the Canadian Medical Association, the Canadian Pharmacists Association and the Consumers' Association of Canada have all stated their opposition to direct-to-consumer prescription drug advertising. The President of the Quebec Medical Association has said that it would raise the cost of health care and undermine the efforts of physicians and pharmacists, who are trying to promote cost-effective drug therapies such as generic drugs and more appropriate antibiotic therapies.

Could the Leader of the Government in the Senate tell us why it is considering lifting the advertising ban when it is faced with such strong opposition?

**Senator Carstairs:** I can assure the honourable senator that the government will take into consideration all of the strong representations that have been made by organizations in which the government puts a great deal of confidence and trust, but I feel it is appropriate for the Government of Canada to study any number of issues. Representations have been made that the present policy is perhaps unfair, and therefore it is appropriate that such a study be conducted. However, I do not think we should prejudice the results of that study.

## SOLICITOR GENERAL

### FIREARMS REGISTRY PROGRAM—TRANSFER OF FUNDS IN SUPPLEMENTARY ESTIMATES (A)

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, yesterday, in answer to Senator Comeau, the Leader of the Government said there were no new monies in the Supplementary Estimates for the Canadian Firearms Centre. Yet, in looking at the Blue Book for Supplementary Estimates (A) one finds an additional amount of \$10 million repeated three times.

I refer the minister to page 22. Under "Proposed Schedule 1 to the Appropriation bill" and "Canadian Firearms Centre," we find the authorization to transfer a certain amount of money from the Department of Justice to the Solicitor General. As we know, the responsibility has been transferred from one department to the other. It goes on to say, "and to provide a further amount of \$10 million."

On page 13, under "Summary of Changes to Appropriations" and the column entitled "New Appropriation, Canadian Firearms Centre," we see the figure of \$10 million.

Finally, on page 88 of the Supplementary Estimates, under "Solicitor General, Canadian Firearms Centre," vote 7a, and the column "New Appropriation," I will read the appropriate words: "to provide a further amount of \$10 million."

Does my research confirm that, in effect, the Supplementary Estimates do ask for an additional \$10 million, contrary to what the minister suggested yesterday?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, my information is exactly the same as was given to Senator Comeau. Although this is the way in which it is listed in the Estimates, there is, in reality, no new money. This is a transfer of \$10 million from the Department of Justice to the Department of the Solicitor General because the Department of the Solicitor General is now in charge of the firearms registry.

**Senator Lynch-Staunton:** Honourable senators, I would ask the minister to speak to her researchers and urge them to read page 13 of the Supplementary Estimates, where there is, under the rubric "Transfer," an amount that is the amount being transferred from the Department of Justice to the Solicitor General to meet exactly the responsibilities that have been moved along. However, in addition, under "New Appropriation," there are \$10 million. I would suggest strongly that the minister perhaps has not been as well-informed on this particular item as she usually is.

**Senator Carstairs:** Honourable senators, in light of the representations of both Senator Lynch-Staunton and Senator Comeau, I will again go back and have this information verified. However, I did ask the question again today because of the question posed by Senator Comeau yesterday, and I was given assurances that there is no new money. I do not wish in any way to put false information on the record, so should the information be incorrect, I will come back to the chamber tomorrow with a further update.

**Hon. Gerald J. Comeau:** Honourable senators, we raised this question in the Finance Committee the last time we met with officials. We indicated to them that, given the work we have to do, we try to do a good job on behalf of taxpayers while being mindful of their tax dollars. We said that we would like to be able to read the Estimates as provided to us in a fashion that is not misleading. That issue was raised forcefully with the officials, and they assured us that such would be the case in the future and that they would try not to mislead us.

However, if one reads both the French and English versions of the Supplementary Estimates, they refer to a new appropriation of \$10 million. Now, either it is a new appropriation — "nouveau crédit" in French, — or it is not. If the case is that this money is not a new appropriation, the minister should get the message out to her officials at Treasury Board, or whoever writes this stuff, to put a stop to misleading information of this sort.

**Senator Carstairs:** Honourable senators, I will obtain clarification because I have committed to the Leader of the Opposition that I will do so. My understanding is that the money is indeed a new appropriation for the Solicitor General, but it is taken from the old appropriation of the Minister of Justice. However, if there is any information to the contrary, I will make sure that I provide it tomorrow.

## UNITED NATIONS

### NUCLEAR NONPROLIFERATION

**Hon. Douglas Roche:** Honourable senators, my question is to the Leader of the Government in the Senate. Yesterday, at the United Nations, President Chirac of France said:

Let us convene a summit meeting of the Security Council to outline a true plan of action of the United Nations against proliferation.

This is not a sudden inspiration. France and Germany have been arguing in this manner for several months. President Chirac put his argument very succinctly when he said:

We must stand united to guarantee the universality of treaties and the effectiveness of nonproliferation regimes.

Does Canada support these statements — I suppose it does — and what steps will Canada take to press forward with the idea of a summit of the Security Council to deal with the increasing dangers of nuclear and other weapons of mass destruction?

I ask these questions because Canada has not yet spoken publicly on this matter, and I believe it is very important that Canada's voice be heard.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, as the honourable senator himself indicated, the President of France in fact put the question in the form of a speech only yesterday. Therefore, I think it is not unreasonable that we would not know as of two o'clock this afternoon exactly what the position of the Canadian government will be on this matter; although, as the honourable senator has wisely said, since we have supported this proposal in the past, that would be the direction the government may well take in the future.

I will take the honourable senator's query to the government, and in due course I am sure the Government of Canada will announce its position.

**Senator Roche:** I thank the minister for taking that idea forward.

### INVOLVEMENT OF PRIME MINISTER IN INSTITUTIONAL REFORM

**Hon. Douglas Roche:** Yesterday, also at the United Nations, Secretary-General Kofi Annan called for reform of the Security Council, which would include its enlargement, and he announced his intention to form a committee of eminent persons to consider the subject and report to him with their recommendations in one year.

Also yesterday, Prime Minister Chrétien spoke at the United Nations and called for "bold renewal" and "meaningful reform" of the UN. It would seem that Kofi Annan's ideas and Prime Minister Chrétien's ideas are a good fit.

Is any consideration being given to having Mr. Chrétien, shortly to be a former prime minister, become a member of the eminent persons group, which would be a good idea, allowing him to bring forward his long commitment to the core Canadian values of support for the United Nations?



**Hon. Sharon Carstairs (Leader of the Government):** The honourable senator is absolutely correct. The statements of Kofi Annan and our Prime Minister yesterday were indeed a very good fit. However, the Right Honourable Jean Chrétien intends to remain Prime Minister until February 2004. Mr. Annan has indicated that he wants to do this study very quickly. He said he wanted a report in one year. If a report is to be ready in one year, things had better get going relatively quickly. In that, I am not sure our present Prime Minister will be available.

• (1410)

## SOLICITOR GENERAL

### ROYAL CANADIAN MOUNTED POLICE— PRIME MINISTERIAL SECURITY

**Hon. Marjory LeBreton:** Honourable senators, that last answer about the present Prime Minister being in place until February 2004 precipitates this question: Could the Leader of the Government in the Senate tell us if it is the intention of the RCMP to provide prime ministerial-level security for the member for LaSalle-Émard, given his success in his party's delegate selection process? If so, what will the cost be to Canadian taxpayers of having two persons receiving such a high-security level?

**Hon. Sharon Carstairs (Leader of the Government):** As the honourable senator knows, security is made available to the Prime Minister of this country. It is also made available to ministers of the Crown, should they need it. It is sometimes made available to members of Parliament, including senators, should they be in a circumstance in which they need it.

However, prime ministerial security is provided to the Right Honourable Jean Chrétien and will continue to be provided to him until he is no longer Prime Minister, and to no one else.

**Senator LeBreton:** Honourable senators, normally when a leader of a party is elected, the level of security for that person is raised, for obvious reasons. Has the level of security been raised for Mr. Martin? If so, what is the cost to Canadian taxpayers?

**Senator Carstairs:** Honourable senators, Senator LeBreton has answered her own question. Although Mr. Martin won the support of a large number of delegates last Saturday, he has not yet been elected leader of the Liberal Party of Canada.

**Hon. Marcel Prud'homme:** Honourable senators, I disagree with Senator LeBreton. Former prime ministers at times are provided with security. If former Prime Minister Mulroney had been provided security, there would have been no need for the assistance of a senator at the unveiling of the statue of Mr. Mulroney, who was accompanied by the present Prime Minister and the two Speakers of Parliament.

Protection should be extended to certain people, including ex-prime ministers when it is required. However, I disagree with my friend Senator LeBreton.

**Senator Carstairs:** Honourable senators, I can understand why Senator Prud'homme disagrees with Senator LeBreton. As I indicated, under some circumstances, members of Parliament and senators are also provided with additional security. That happens in circumstances such as when threats are made to their lives. I have heard no indication that any such threats have been made against the Member of Parliament for LaSalle-Émard. If such threats were made, the appropriate security would be put in place.

**Hon. David Tkachuk:** Honourable senators, will Mr. Martin, or perhaps Ms. Copps, be given prime ministerial security from November 15 until February when the Prime Minister leaves his post?

**Senator Carstairs:** Honourable senators, that is a hypothetical question. We do not know what will happen on November 15. When November 15 comes, and when it is decided that a particular person in this country needs appropriate levels of security, I presume that decision will be made.

**Hon. Laurier L. LaPierre:** Honourable senators, I thought it was customary not to discuss the security arrangements effected by the Royal Canadian Mounted Police. Does the Leader of the Government in the Senate not think it improper to be asked detailed questions about the protection that may be afforded to Mr. Martin or Ms. Copps, or even Senator LeBreton, who probably needs it more than anyone else on the planet?

**Senator Carstairs:** Honourable senators, to repeat, there are occasions when, because of circumstances beyond their control, imposed upon them by others, security is provided to members of Parliament and senators. There are ministers of the Crown who, on occasion, have security. On many occasions, they do not have security. I do not have security and I feel no particular need for it. However, there have been instances where other ministers, because of threats, have been provided security, and I think that is entirely appropriate. I think Canadians would want that, even though it is their tax dollars that are being spent. I think members of this and the other chamber would want that, if threats were being made against them.

## FOREIGN AFFAIRS

### SAUDI ARABIA—MALTREATMENT OF INCARCERATED CANADIAN CITIZEN

**Hon. Noël A. Kinsella (Deputy Leader of the Government):** Honourable senators, I should like to ask the Leader of the Government whether she was able to ascertain the answer to my question concerning the torture suffered by a Canadian citizen, namely William Sampson, at the hands of officials in the Kingdom of Saudi Arabia. My question was whether Canada would file a communication against the Kingdom of Saudi Arabia for violations of the International Covenant on Civil and Political Rights.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I do not know specifically whether we have used that vehicle. I can tell the honourable senator that the Canadian government is extremely disappointed at the refusal of the Saudi Arabian government to initiate an inquiry into the treatment of William Sampson, and we have expressed that disappointment.

Saudi Arabia has invited Mr. Sampson to file a complaint within its judicial system. Until now, Mr. Sampson has refused to file that complaint, but he has apparently been informed that Canada stands ready to assist him should he decide to do so.

**Senator Kinsella:** Honourable senators, I noted the comment yesterday of the Minister of Foreign Affairs, who was with the Prime Minister at the United Nations in New York. He is reported to have said that he felt that Mr. Sampson would have to exhaust all domestic remedies before the international machinery could come into force. That is a position I reject. There are no grounds for that, since we in the world community have moved from the Westphalian system of law and order to a global communitarian position.

Under international law, there exists the United Nations Convention against Torture, to which both the Kingdom of Saudi Arabia and Canada are signatories. I believe article 12 of the Convention against Torture would be applicable in the case of torture perpetrated by officials of the Kingdom of Saudi Arabia against Mr. Sampson, a Canadian citizen.

Therefore, if Canada is not going to file a complaint on the basis of the International Covenant on Civil and Political Rights, will it do so under the United Nations Convention against Torture?

**Senator Carstairs:** Honourable senators, I shall make that representation to the Minister of Foreign Affairs on behalf of Senator Kinsella.

• (1420)

[Translation]

#### DELAYED ANSWER TO ORAL QUESTION

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I have the honour to table an answer to a question raised by Senator Comeau on May 13, 2003, concerning the Canadian Firearms Centre and the firing of staff members.

#### SOLICITOR GENERAL

##### FIREARMS CENTRE—FIRING OF STAFF MEMBERS

*(Response to question raised by Hon. Gerald J. Comeau on May 13, 2003)*

Over the past several months the government has announced several key initiatives to improve the Program and provide better service to Canadians across the country.

On February 21, the Minister of Justice, joined by the Solicitor General, tabled an Action Plan to deliver a firearms control program that provides significant public safety benefits, while setting the Program on a path to lower costs.

The Action Plan outlines ways of improving the Program's services, transparency, and accountability. It signals the Government of Canada's commitment to the firearms control program and responds to the recommendations made by the Auditor General in her December report.

The Government has already begun to implement these actions. On April 14, 2003, the Canadian Firearms Centre was transferred from the Department of Justice to the portfolio of the Solicitor General. This is a natural fit for the Solicitor General portfolio, whose main focus is enhancing public safety.

The Action Plan also stated the Government's intention to consolidate the headquarters function for the Firearms Program in Ottawa. This has already occurred.

On May 30, a Commissioner of Firearms was appointed. Reporting to the Solicitor General, the Commissioner has full authority and accountability for all federally administered elements of the Canadian Firearms Program. In addition, the position of Registrar of Firearms, who has traditionally been a member of the RCMP, was moved to the Canadian Firearms Centre. The Registrar reports to the Commissioner of Firearms.

Also, in following with the Action Plan, the Chief Financial Officer position has been filled. He is responsible for risk analysis, data integrity and reporting, as well as ensuring that resources are used in accordance with the Program's financial plan. He must also report on results.

The Chief Operating Officer position has also been filled. She is responsible for the overall operations of the Program, including licencing and firearms registration.

On May 14, 2003, Bill C-10A received Royal Assent. These amendments to the Criminal Code and the Firearms Act are primarily administrative in nature and their goal is to streamline the Canadian Firearms Program. Several of these amendments require new regulations or amendments to existing regulations before they can take effect. Accordingly, on June 13, 2003, fifteen proposed regulations were tabled in Parliament by the Solicitor General. All but one of those amend existing regulations. The tabling of the proposed regulations is another important step in the continuous improvement of the Firearms Program.

Consultations on the regulations with Parliament and with the public through the Gazette process are underway. Also, Canadian citizens are invited to provide feedback and/or make suggestions respecting Canada's Firearms Program and the proposed regulations through the Canadian Firearms Centre Web site.

[ Senator Carstairs ]



On June 18, 2003, the Federal Solicitor General announced the establishment of a Program Advisory Committee, which was a key element contained in the Action Plan. This Committee is comprised of experienced individuals external to government with management and systems expertise. The volunteer members of the Committee provide advice on how to improve quality of service to the public and the management of the Program. The Program Advisory Committee held its first meeting in June.

The Canadian Firearms Program will provide an annual report to Parliament containing relevant information on the Program and which will complement existing government reports already before Parliament. This is consistent with a recommendation of the Auditor General, and furthers efforts made since January 2002 to report more information, including projected costing, in its Report on Plans and Priorities.

Canadians want strong and sensible firearms laws. They also want a commitment from us that we will administer this program in the most efficient manner possible. The Government has made this commitment and as you can clearly see, is already moving forward with measures to streamline the program and make it more efficient.

#### VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I wish to draw to your attention the presence in the gallery of participants in the Fall, 2003, meeting of the Colloque de coopération parlementaire, from Algeria, Cameroon, Gabon, Madagascar and Tunisia. On behalf of all the senators, I welcome you.

#### ORDERS OF THE DAY

##### BUSINESS OF THE SENATE

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I suggest that, on the Order Paper, we begin, under Government Business, under Bills, with Item No. 2, then move on to Item No. 3, and Item No. 1 under the same heading.

[English]

#### SPECIFIC CLAIMS RESOLUTION BILL

##### THIRD READING—MOTION IN AMENDMENT— ORDER STANDS

On the Order:

Resuming debate on the motion of the Honourable Senator Robichaud, P.C., seconded by the Honourable Senator Rompkey, P.C., for the third reading of Bill C-6, to establish the Canadian Centre for the Independent Resolution of First Nations Specific Claims to provide for the filing, negotiation and resolution of specific claims and to make related amendments to other Acts, as amended,

And on the motion in amendment of the Honourable Senator Watt, seconded by the Honourable Senator Gill, that the Bill, as amended, be not now read a third time but that it be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

**Hon. David Tkachuk:** Stand.

[Translation]

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Question!

[English]

**The Hon. the Speaker:** There is a call for the question. If the honourable senator wishes the matter to extend one day, he will have to make a formal motion to adjourn.

**Senator Tkachuk:** I move the adjournment of the debate until the next sitting day of the Senate.

**The Hon. the Speaker:** It was moved by the Honourable Senator Tkachuk, seconded by the Honourable Senator Stratton, that further debate be adjourned to the next sitting of the Senate.

This is not a debatable motion.

[Translation]

**Senator Robichaud:** Honourable senators, I would like some clarification. When the senator speaks of further debate being adjourned to the next sitting of the Senate, am I to understand that this means tomorrow?

[English]

**Senator Tkachuk:** It is not debatable.

**The Hon. the Speaker:** We have a question before us on the motion of Senator Tkachuk, seconded by Senator Stratton, to adjourn debate. Is it your pleasure, honourable senators, to adopt the motion?

Senator Cools, do you have a question?

**Hon. Anne C. Cools:** I was pointing out to Senator Day a small mistake in yesterday's *Debates of the Senate* concerning him, and so I did not hear. What is the question?

**The Hon. the Speaker:** The motion to adjourn.

**Senator Cools:** To adjourn what?

**The Hon. the Speaker:** I understand that sometimes we are distracted. If all honourable senators are listening, I will inform you of the motion by Senator Tkachuk, seconded by Senator Stratton, to adjourn further debate on Bill C-6.

**Senator Robichaud:** — until tomorrow.

**The Hon. the Speaker:** I shall now put the question. Is it your pleasure, honourable senators, to adopt the motion?

[English]

**Some Hon. Senators:** Agreed.

**Some Hon. Senators:** No.

**The Hon. the Speaker:** I shall put the question in the formal way.

**Senator Cools:** It was just voted on.

**The Hon. the Speaker:** It is not a question of privilege but a question of order, perhaps.

The problem is that we are in the middle of a proceeding. Does it pertain to the proceeding? Then I will hear you. Senator Gill.

[Translation]

**Hon. Aurélien Gill:** Honourable senators, Bill C-6 is currently before us, once again. We know that many questions have been raised. We know that these questions are a cause for concern to many people, starting with the First Nations. I think we may be able to make a suggestion or perhaps bring forward a motion in amendment. If we had one more day to consider the bill, we could perhaps, tomorrow, move something that might be acceptable to more people.

I cannot give you any specifics, because we are in the midst of drafting something. I know that the senators are quite concerned, and we respect that fact.

[English]

**The Hon. the Speaker:** Senator Gill, I have listened carefully and I do not believe that is a point of order. There may be, however, a desire on the part of the house to deal with this under house business, but that would have to be done with unanimous leave. If you would like to ask for that leave, I will see whether there is agreement.

[Translation]

**Senator Gill:** Honourable senators, I am only asking that debate on this item be adjourned until tomorrow so that it can be discussed.

[English]

**The Hon. the Speaker:** Is leave granted, honourable senators, to discuss house business?

[Translation]

**Senator Robichaud:** Honourable senators, Senator Gill does not seem to grasp the purpose of this motion, which is to adjourn today's debate on the amendment to Bill C-6 until tomorrow, providing the extension he referred to. We did not object. I think His Honour was about to put the question.

**Senator Kinsella:** Honourable senators, that is not what he did.

**Senator Robichaud:** Well, I thought it had been done.

**The Hon. the Speaker:** We interrupted a matter to see whether there was a point of order. There is no point of order. We were discussing house business, but I really did not put it to honourable senators in a formal way.

Is there leave, honourable senators, at this point in our proceeding, which is between a motion and dealing with a motion, to continue to discuss house business?

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** There is, honourable senators, a serious point of order. There is a serious question of how we vote in this place — and nothing is more sacred than how we vote in this place.

There is nothing in our rules that allows the honourable senator who is in the Speaker's chair to ask a question twice.

**Senator Cools:** Right.

**Senator Kinsella:** The question is put and voice vote is held. If two senators rise because they want greater clarity and thus a roll call vote, our rules provide for it. Where in the rules is there a procedure for greater clarity of "I am going to put the question again," when the question was put and a voice vote was taken and nobody stood? I would be pleased if that could be pointed out to me.

**The Hon. the Speaker:** I will deal with Senator Kinsella's point of order because it really is a point of information.

**Senator Cools:** No, it is not.

**The Hon. the Speaker:** If it is not, I will hear it on the point of order. It has often been the case in this house when a motion has been put by the Chair that voices are heard when the question is put. For example, when the question is put — the question being, "Do you wish to adopt the motion?" — simultaneously some senators will say yea and others will say nay. That is my interpretation of what happened. I did not say that the motion was adopted. I said that I will put the motion, as I often do, in a formal way. The record will have to stand for itself. If the honourable senators wish, I will ask that the record be read. Is it your wish that the record be read?

**Senator Kinsella:** I think we need a point of order ruling. I know there is reference in the *Rules of the Senate* to the honourable senator who is in the chair putting a question twice.

After the question is put the first time, the senator who is in the chair expresses his or her opinion as to whether the yeas have it or the nays have it, and that step was not taken. That is a step that should be taken, not to put the question again. If any honourable senator is in doubt or needs clarification, the rules provide for two senators to rise and say, "I want the vote taken in a different manner."



**The Hon. the Speaker:** I will hear the point of order. I think it is a point of information, but let us hear from senators.

• (1430)

[Translation]

**Senator Robichaud:** I support His Honour's approach to this matter. This is a current practice in this place, when we are not clear about what the honourable senators want. When you put the question on the adjournment motion, we heard some say "yea." I said "nay," and even insisted, because I would like to see the debate continue. His Honour, to make sure he had heard right, without putting the question a second time, simply repeated. It is not a matter of voting twice on the same question, but rather of making sure that the vote on the question that was put is clear.

[English]

**The Hon. the Speaker:** On the point of order, I will recognize Senator Cools, and then Senator Prud'homme and Senator Lapointe.

**Senator Cools:** Honourable senators, there is a very valid point of order in what Senator Kinsella has raised. I sincerely believe that His Honour made a genuine mistake. There was no "malintention" on his part. I think he made a sincere mistake, the consequence of which was to create a slight bit of disorder here, but something that can be fixed quickly with patience and magnanimity.

Senator Kinsella is absolutely right — the question was put and voices were expressed. Some said yea and some said nay.

What we have really is a vote in process, a vote proceeding in motion, and it is simply not to be interrupted by unanimous leave. There is no such phenomenon as unanimous leave to let someone else speak. I think Senator Gill misunderstood what was happening, which was an honest mistake.

If, perhaps, senators did not hear the question put, as His Honour put it, then they could have called for a repetition. At that point, it would have been perfectly in order for him to repeat the question. However, the fact of the matter is that there was no difficulty with hearing.

His Honour clearly put the question. The yeas pronounced by voice. The nays pronounced by voice. All that was left to be done was to complete the process, which is that His Honour would simply have said, "I think the yeas have it" or "I think the nays have it." At that point, the process would continue. If two senators would rise, we would move into a recorded vote or not; or perhaps the whips would rise to say that we would defer the vote.

Honourable senators, once a vote is in motion and it is proceeding, it is in motion and it should be completed. All that

happened is that His Honour unwittingly interrupted the process and created a little bit of confusion.

The fact of the matter is that the chamber had already pronounced, and the chamber cannot be asked to vote twice on the same item. It is out of order to do so. I wish that some of these matters could be clarified so that senators could understand more clearly the process that is before them.

I would also like to address the business of unanimous leave and unanimous consent. A lot of people are falling into this mistake of believing that unanimous consent is a way of expressing a vote. It is not. It is a way of suspending our rules temporarily. If the chamber wishes to express its will, it must be expressed in clear ways. However, the fact of the matter is that Senator Kinsella was absolutely right.

[Translation]

**Hon. Jean Lapointe:** Honourable senators, I have a question for Senator Cools. If she knows the rules so well and is keen to enforce them — first, she should be holding her earpiece instead of talking with her neighbour while matters are being discussed here — then she should stand for office when His Honour leaves the Senate. My second question is a very simple one; it is a suggestion.

[English]

**Senator Cools:** I can start for you, if you want, because you are highly personal and vastly out of order —

**The Hon. the Speaker:** Senator Lapointe has the floor.

[Translation]

**Senator Lapointe:** Instead of chatting while I am talking, listen to what I have to say. If you have a question, you can ask it once I have finished; I will gladly answer. In the meantime, I have not finished.

[English]

**Senator Cools:** Point of order!

[Translation]

**Senator Lapointe:** Rise on your point of order once I have finished.

[English]

**Senator Cools:** Your Honour, no senator is supposed to stand —

**The Hon. the Speaker:** Senators, the rules are clear. Only one senator has the floor at a time. Senator Lapointe.

[Translation]

**Senator Lapointe:** Honourable senators, as a point of order, the honourable senator should have to step out for five minutes while the other senator is speaking. That being said, Senator Tkachuk moved adjournment. You asked whether the adjournment motion was agreed to, and the response was unanimous. My colleague, Senator Gill, did not grasp the meaning very well. The issue is not Senator Gill's error or bad timing.

The Deputy Leader of the Government asked Senator Tkachuk until when debate on this item on the Orders of the Day would be adjourned, and he said tomorrow. I do not see why we have to spend half an hour talking about it, when the matter has been resolved. That is my point of view, and I am delighted with it.

[English]

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I have been in this chamber much less than some of you, but certainly long enough to have some comprehension of the rules and also some understanding of the common practice of this institution.

What occurred a few minutes ago was really quite simple. Senator Tkachuk put a motion. His Honour asked for yeas and nays. Interestingly enough, Senator Cools stood up a few minutes later and did not seem to know what we were talking about at that particular moment in time, and that is on the record.

I think it is fair to say that Senator Gill was somewhat confused as to just exactly what the message was that we were trying to do.

His Honour clearly did not have a clear view of whether there were yeas and nays in equal number, so he did what any rational, reasonable, responsible Speaker would do — he put the formal question. He asked us to say, in clear and unequivocal terms, whether we were yea or whether we were nay. When he tried to do that, we had a point of order. There is no point of order.

Your Honour, in my view and I think the view of the vast majority of the members of this chamber, you tried to do exactly the logical and reasonable thing.

**Senator Tkachuk:** I would like to say, Your Honour, that this has been a very interesting non-debatable motion.

**The Hon. the Speaker:** Thank you, honourable senators. I will do my best to sort through this matter. I appreciate your comments on the point of order.

I will only deal with the point of order that Senator Kinsella has raised and not the issue of unanimous consent. If honourable senators wish to raise that, I think I should deal with it as a separate matter.

On the issue raised by Senator Kinsella — and I appreciate Senator Carstairs and all senators' comments on this point — he is quite right that when a motion is put, it is only voted on one time. I believe Senator Carstairs has more or less correctly described what has happened here and what my position is as

your presiding officer at this time; that is, a motion was made. I think the sequence was that the question that is normally asked — Is it your pleasure to adopt the motion? — was put. I heard voices, and I did not have a clear understanding of which voices were in majority.

**Senator Lynch-Staunton:** You did not ask.

**The Hon. the Speaker:** I am sensitive to Senator Gill's strong feelings about this bill, so I heard him. I thought he might have a point of order; it would be unusual — I did not think he did, and he did not. What he wanted to do was intervene to ensure his point was made about this adjournment matter. We did not get unanimous consent, but we heard him anyway. I think that event is totally extraneous to Senator Kinsella's question.

• (1440)

The answer to Senator Kinsella's question is either one or the other. Either I expressed an opinion —

Perhaps, I should ask him whether the motion was adopted?

**Senator Lynch-Staunton:** You did not express an opinion.

**The Hon. the Speaker:** To the best of my recollection, I did not express an opinion.

**Senator Lynch-Staunton:** You did not.

**The Hon. the Speaker:** As many voices were heard, I followed a practice that I have followed on virtually every occasion when I have encountered that situation. I used the words: "I will put the vote in a formal way."

When it is unclear to me, there is a formal way of putting the vote. That way is to ask for yeas and nays. I was about to do that when this matter came up about putting the question a second time.

I believe the solution to this question of whether I said the motion was passed or not passed will be in the record. I do not believe I have any option but to ask that the record of that part of the proceeding be reread to the chamber for purposes of determining whether I said the motion is passed or the motion is defeated. I will stand by that. That will be the end of it.

To my best recollection, unlike Senator Kinsella who heard it differently, I did not say that it was passed or defeated but, rather, that I will put the motion in a formal way.

Could I ask that the appropriate part of the proceeding be reread to the chamber.

**Senator Lynch-Staunton:** The what.

**The Hon. the Speaker:** Excuse me, it has not been read a first time. Could the appropriate part of the proceeding be read to the chamber?



What did I say at that point? Did I say, as Senator Kinsella heard, that the motion is passed, or did I say that the motion is defeated?

**Senator Nolin:** No. It was not said.

**Hon. John Lynch-Staunton:** Honourable senators, a voice vote was taken. Unlike the standard procedure, His Honour did not indicate whether the yeas or nays had it — at which time, two senators could have risen and asked for a recorded vote. His Honour said nothing, except that we would have another vote.

**The Hon. the Speaker:** No, that is not our practice. Our practice is that we give a fair opportunity for senators to be heard in a voice vote. We do not leave it to one instant, a fraction of a second, in which to decide. We take a bit of time. I have followed the practice of providing a fair opportunity for yeas and nays to be heard every time.

No opinion has been expressed by the Chair on which way the vote went. If two senators had stood, it would have resolved the issue. No senator stood, and no opinion has been expressed by the Chair as to whether the motion was adopted.

**Senator Lynch-Staunton:** The role of the Speaker is to determine which are the more prominent in a voice vote, the yeas or the nays..

His Honour did not do that. That is a vote. That is a formal vote on a motion formally put. Since the Chair did not say anything, I can only assume that the yeas have it. Nobody rose to challenge it. Now, we are to have another vote.

**The Hon. the Speaker:** Honourable senators, there cannot be two votes on the same matter. If the Chair is silent, it does not mean that the vote was yea or nay. In fact, our practice is that where there is an equality of voices the nays would have it, the motion would not be adopted. In any event, that is irrelevant. There has been no decision from the Chair on which way the vote went.

A vote would not occur until a fair opportunity for senators to be heard had taken place. I was about to provide that.

Senator Prud'homme is eager to speak to this. I will hear him.

**Hon. Marcel Prud'homme:** Honourable senators, I shall speak in English slowly.

I am at the very end of the chamber, and I heard His Honour very clearly. He is absolutely right. His Honour said yeas and nays. There were some yeas; there were some nays. His Honour did not have time to say, "In my opinion," one way or the other. Two senators could have then risen.

His Honour did not have time to reach that point when Senator Gill rose. We then went down another track.

I think that His Honour is absolutely right. We did not have time to finish our procedure. There is no confusion. To me, His Honour was clear. We did not reach the part that has been done

by this Chair since the beginning, namely, where he says, "In my opinion, the yeas have it," or "In my opinion, the nays have it." At that time, it would have been up to the senators to rise or not. If two had risen, we would then have had to have a formal vote.

We did not reach that point because we were completely sidetracked by our good friend, Senator Gill, who knows now that he was completely out of order on this issue. We are not supposed to express any opinion during a vote. In all fairness to everybody, and in my opinion, His Honour could now say, "In my opinion —"

**The Hon. the Speaker:** Honourable senators, I must call an end to the interventions.

I will give a ruling on this. You can challenge the ruling if you wish.

Rule 65.(1) states:

When a question is put to a vote, the Speaker shall ask for the "yeas" and "nays" and shall there upon decide whether the question has carried.

In practice, on motions, particularly motions to adjourn, the Speaker does not stand and say, "Those in favour say yea, those not in favour say nay." The speaker says, "Is it your pleasure to adopt the motion?" Normally, there is silence or there is a clear indication by voices of a vote in favour or against.

That did not occur on this occasion. There was no clear indication from the voices whether the vote was in favour or against when the question was asked, "Do you wish to adopt the motion?"

When I am not certain and when I have not given an opinion, which I have not, I will put the vote in a formal way. I then ask for the yeas and nays, and I make a decision. If the chamber wishes a division, two senators standing will require a division.

This question has been put but has not been determined because I have given no indication of whether the motion was passed or defeated.

Senator Lynch-Staunton has taken the position that if it is unclear or if nothing is said, it means that the motion is passed. I am not aware of any such rule. In fact, we do have a rule that says that on an equality of voices a motion fails.

If there were to be an automatic decision, where silence is to be interpreted as yes or no, it would seem to me that our practice is more consistent with no than yes. In any event, that is not what happened, and that is not at issue here.

If honourable senators wish, one senator's voice will be sufficient for the record to be read to confirm that I did not express an opinion on whether the vote passed or whether the vote failed. If not, I will put the question in a formal way.

On the motion of Senator Tkachuk, seconded by Senator Stratton, to adjourn debate on Bill C-6 as amended to the next sitting of the Senate, will all those in favour of the motion please say yea?

**Some Hon. Senators:** Yea.

**The Hon. the Speaker:** Will all those opposed to the motion please say nay?

**Some Hon. Senators:** Nay.

**The Hon. the Speaker:** The motion is passed.

Order stands.

## ANTARCTIC ENVIRONMENTAL PROTECTION BILL

### THIRD READING—DEBATE ADJOURNED

**Hon. Ione Christensen** moved the third reading of Bill C-42, respecting the protection of the Antarctic Environment.

She said: Honourable senators, 12 years ago, Canada and our partner nations agreed to a series of measures to protect the global common, that is, the Antarctic.

These measures are in the Protocol on Environmental Protection to the Antarctic Treaty, which was signed in 1991 in the city of Madrid, and is commonly known as the Madrid Protocol.

• (1450)

Honourable senators, I rise today to speak in support of Bill C-42, the Antarctic Environmental Protection Act. This bill will enable Canada to ratify and implement the Madrid Protocol.

The Antarctic is a wild and windswept continent that is more than one and one-half times the size of Canada. Together with its surrounding oceans, the Antarctic continent truly is the world's largest great wilderness.

Honourable senators, the environmental importance of the Antarctic cannot be underestimated. Like the Arctic, the Antarctic region is a sensitive indicator of climate change. The land mass and surrounding waters of the Antarctic provide essential nutrients to the rest of the world's oceans, supporting life systems thousands of kilometres away from the South Pole.

It is amazing that a region with the coldest temperatures on earth is home to so many mammals, birds and fish. Remarkably, the Antarctic sustains marine mammals such as seals and whales at far greater levels than are found in the Arctic regions.

The Antarctic provides an unparalleled natural laboratory for scientists studying the earth's natural systems. Human activity in the Antarctic is on the rise with more than 10,000 tourists landing in the Antarctic on an annual basis. There are dozens of research stations on the continent.

Canadian activities in the Antarctic fall into three general categories: tourism, science and logistical support. There are two Canadian companies that lead ecotours to the Antarctic. Collectively, they take a few hundred people to the region each year. As well, roughly 40 Canadian scientists are involved in Antarctic research.

With increasing human activity in the Antarctic comes the threat to the relatively pristine Antarctic environment in the form of marine pollution, harm to wildlife, and, of course, the things we humans leave behind — garbage.

The Madrid Protocol is designed to protect the Antarctic environment from these threats. Canada signed the protocol but has yet to join the 30 countries that have already ratified it.

Honourable senators, the Madrid Protocol is one of the international agreements that constitute the Antarctic Treaty System. Canada is a party to the Antarctic Treaty, which was put in place more than 50 years ago.

The Antarctic Treaty also includes two conventions: the Convention for the Conservation of Antarctic Seals and the Convention on the Conservation of Antarctic Marine Living Resources. Canada is a party to both these conventions.

The conservation of fish, which includes the commercial fishing of fish and other marine living resources, is covered under these conventions and not in the protocol, which focuses on other aspects of the Antarctic ecosystem.

Honourable senators, it has always been Canada's intent to ratify the Madrid Protocol. Canadians who are active in the Antarctic have been calling for ratification since Canada signed the protocol. The Madrid Protocol requires Canada to regulate Canadian activity in the Antarctic.

Ratifying the Madrid Protocol requires new legislation in order for the Government of Canada to grant permits for activities in the Antarctic. Bill C-42 is consistent with the approach taken by other nations in the implementation of the protocol and is consistent with existing federal environmental legislation.

Under Bill C-42, permits to be in the Antarctic are required for all Canadians, Canadian vessels and anyone who is on a Canadian expedition. Applications for these permits must be accompanied by an environmental assessment, emergency plans and waste management plans.

Permits are also required for Canadians who wish to conduct certain activities that would otherwise be prohibited under the bill, such as being in specially protected areas or undertaking research that results in contact with Antarctic wildlife.

Reciprocity is a key feature of Canada's approach to implementing the Madrid Protocol. This means that if authorization is obtained for certain activities under the legislation of another party to the protocol, the activity would be considered to be authorized under Bill C-42 and a permit would not then be required.



The bill bans certain activities without exception, such as the introduction of substances harmful to the marine environment, damage to historic sites and the open burning of waste. Bill C-42, however, provides exceptions to these prohibitions in the case of an emergency.

Compliance promotion and enforcement of Bill C-42 in Canada would be the responsibility of enforcement officers and inspectors, who would be designated under the legislation to carry out the inspection of Canadian activities. Should inspectors find that Canadian activities are being conducted in a manner that is inconsistent with the bill, those involved in the activities could be prosecuted in Canada.

Enforcement officers would have similar powers in Canada as those provided under the Canadian Environmental Protection Act and the Species at Risk Act. This means that they could have the powers of a peace officer, including inspection, search, seizure, detention and forfeiture. Offences, penalties and sentencing provisions would be similar to the approach taken under other federal environmental legislation. Since the Antarctic is a global commons, policed cooperatively by parties to the Antarctic Treaty, the powers of enforcement officers would be limited to Canada.

Honourable senators, it is time for Canada to do its part in the global effort to protect the vulnerable Antarctic ecosystem and ratify the protocol on environmental protection to the Antarctic Treaty.

I encourage all honourable senators to support Bill C-42 and to put in place the legal framework we need to ratify the bill.

On motion of Senator Lynch-Staunton, debate adjourned.

## PUBLIC SERVICE MODERNIZATION BILL

### THIRD READING—MOTION IN AMENDMENT— POINT OF ORDER—SPEAKER'S RULING— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Harb, for the third reading of Bill C-25, to modernize employment and labour relations in the public service and to amend the Financial Administration Act and the Canadian Centre for Management Development Act and to make consequential amendments to other Acts,

And on the motion in amendment of the Honourable Senator Murray, P.C., seconded by the Honourable Senator Oliver, that the Bill be not now read a third time but that it be amended in clause 12,

(a) on page 145, by replacing line 20, with the following:

“(5) The Governor in Council shall designate, after approval by resolution of the Senate and House of Commons,”; and

(b) on page 151, by replacing lines 20 to 31, with the following:

“110. (1) The Chairperson shall, as soon as possible after the end of each fiscal year, submit an annual report to Parliament on the activities of the Tribunal during that fiscal year.

(2) The Chairperson may, at any time, make a special report to Parliament referring to and commenting on any matter within the scope of the powers and functions of the Tribunal where, in the opinion of the Chairperson, the matter is of such urgency or importance that a report on it should not be deferred until the time provided for transmission of the next annual report of the Tribunal.”; and

(c) on page 168, by replacing line 11, with the following:

“(4) The Governor in Council shall designate, after approval by resolution of the Senate and House of Commons,”.

**The Hon. the Speaker:** Honourable senators, I have a ruling to give on this matter. We are 10 minutes away from having copies distributed. Could I indulge honourable senators for that time to reproduce the ruling so that it can be distributed?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** I hear that it is agreed. Are there any dissenting voices?

**Hon. Anne C. Cools:** Are you asking, Your Honour, to suspend for 10 minutes? What are you really asking for? What you have said is that you need 10 minutes to reproduce the ruling. I take it you are asking us to suspend for 10 minutes.

**The Hon. the Speaker:** Yes, that would be a good solution, or we could go on to another item and return to this later in the sitting, anything that would give me 10 minutes to have the ruling reproduced.

We could proceed with the ruling now, and I could give part of it. Are we agreed?

**Senator Cools:** No.

**The Hon. the Speaker:** We are not agreed. Senator Cools would like to have the ruling before we proceed.

**Senator Cools:** I think we should proceed in the proper way, Your Honour, and if the proper way is that you read the ruling, we should indulge you and suspend for a few minutes to be able to duplicate it properly. It is very easy to do things properly.

**The Hon. the Speaker:** I thank you, Senator Cools. The time taken has resulted in the ruling being copied, and it is now available for distribution.

Accordingly, I will give my ruling.

• (1500)

Honourable senators, yesterday Senator Cools raised a point of order during debate on the third reading of Bill C-25.

The honourable senator claimed that Bill C-25 required the Royal Consent, but that the Senate had not been advised that consent had been granted. As I pointed out in undertaking to give a ruling, Beauchesne, sixth edition, page 213, paragraph 727, provides:

It will also be seen that a bill may be permitted to proceed to the very last stage without receiving the consent of the Crown but if it is not given at the last stage, the Speaker will refuse to put the question.

I have now had a chance to consider the points made by Senator Cools, as well as the interventions of Senator Carstairs and Senator Kinsella, for which I thank them.

Senator Cools read to us paragraph 727(1) of Beauchesne's in which the point is made that:

The consent of the Crown is always necessary in matters involving the prerogatives of the Crown.

[Translation]

The Senator clarified for us that her point of order was limited to a question of the prerogative, and that it had nothing to do with the personal properties of the Crown, for which the royal consent may also be required.

[English]

The senator explained that in her view "there is something very wrong in how Bill C-25 has endeavoured to remove the oath of allegiance. One simply cannot just obliterate the oath of allegiance as a requirement of public service for Canadians." She referred to the entitlement of the Sovereign to allegiance and suggested that:

One may not simply repeal the Sovereign's entitlement to that allegiance or fidelity by a simple bill.

Honourable senators, if Senator Cools' point is that Canadians owe allegiance to their head of state, she is of course right. That said, as far as I can see, Bill C-25 does not abridge the relationship of Canadians to their head of state. Bill C-25 is not about all Canadians; as the bill's sponsor, Senator Day, pointed out to us, it is about the public service and about public servants.

Bill C-25 does propose to repeal the requirement in section 23 of the Public Service Employment Act that every deputy head and employee shall, on appointment from outside the public service, take and subscribe the oath or solemn affirmation of allegiance. On the other hand, the bill does not amend the Oaths of Allegiance Act, section 2 which allows persons to take an oath of allegiance of their own accord. Section 4 of the act even allows the

Governor in Council to make regulations requiring any person appointed to or holding an office that is under the legislative authority of Parliament to take an oath of allegiance notwithstanding that the taking of the oath is not required by any other law.

[Translation]

Senator Cools pointed out to us, correctly, that the law of the prerogative is most complex. This has required the Chair to consult other texts in addition to the traditional procedural authorities. My review of the authorities revealed that the prerogative does sometimes play a role in the relationship between Her Majesty and public servants.

[English]

I would refer honourable senators to such citations as Halsbury's *The Laws of England*, first edition, 1909, citation 487 on page 342 of volume 6; Halsbury's at citation 26 on page 24 of volume 7, as well as Mr. Paul Lorden Q.C., *Crown Law*, section 4. I would also refer senators to the 1983 House of Commons debates at pages 29216 and 29217 with respect to the procedures on Bill C-171, an act to amend the Garnishment, Attachment and Pension and Diversion Act.

These authorities, both British and Canadian, touch on where public servants may be affected by the prerogative, but none leads us anywhere near the conclusion that the Queen has a prerogative right to an oath of allegiance from our public servants.

To conclude, honourable senators, no senator has offered evidence to the Senate that a prerogative relating to oaths of allegiance by public servants currently exists. My research has also failed to uncover authority for such a proposition with respect to the general body of public servants, as opposed perhaps to distinct officeholders. My conclusion is that no such prerogative exists in Canada today. This conclusion in no way derogates from the duty of loyalty that all Canadians, and not just public servants, owe to the Sovereign.

I rule therefore that there is no point of order and that I am not prevented from putting the question on third reading of Bill C-25.

Resuming debate, Senator Mahovlich.

**Hon. Francis William Mahovlich:** Honourable senators, I want to bring to your attention a phrase that was used by the opposition about Jean Chrétien in the 1993 Liberal Red Book about whistle-blowers. It was going to be in legislation. The reason I think that it has not been in legislation is that they have not come up with the right formula or solution, and neither has anyone else.

Dr. Edward Keyserlingk, one of the witnesses who appeared before the committee, recommended an incentive for whistle-blowers, and he says this is one of the reasons we need to do more study. When he starts to study, he will look at 1917 and find that Bolsheviks in Russia and Lenin and Stalin were all whistle-blowers. That is how their system grew. As to Krushchev, that is how he became president. Do we want that system? Of course not. This is why our Prime Minister is careful in legislation.

[The Hon. the Speaker]



The Liberals have followed through with 99 per cent of what they promised in the Red Book.

**Senator LeBreton:** What? That is ridiculous.

**Senator Mahovlich:** The committee heard other witnesses. Sheila Fraser, the Auditor General, stated that the Office of the Auditor General was pleased to see that the Treasury Board's expanded role proposed in Bill C-25 would include reporting to Parliament on human resources management since this would address some of her concerns about fragmented roles and responsibilities and reporting. She explained that the proposed changes to the staffing regime would be consistent with previous reports and findings from recruitment audits done by the Auditor General.

Many witnesses, and I could name a whole list of them, thought that Bill C-25 was much improved. I can recommend to everyone that this bill should be passed.

**Hon. John Lynch-Staunton (Leader of the Opposition):** I would like to ask Senator Mahovlich a question. Is it right to assume that if he has anxieties about proceeding with whistle-blowing, it is because too many times he was subjected to it in many of his memorable dashes down the ice?

**Senator Nolin:** You do not have to answer that one. Say "yes."

**Senator Mahovlich:** The one thing we do not want here is too many red stories.

[Translation]

**Hon. Jean-Robert Gauthier:** The amendment moved by Senator Murray is almost Cartesian in its logic. It has one minor fault, however: its initial premise is false. The motion in question proposes that Bill C-25 be amended by adding to the tribunal attributes that it does not possess. I will explain.

• (1510)

On the Hill, we have five senior officials, the official term for which is "Parliamentary Officers." I named them yesterday. These five officers are appointed by order-in-council and are answerable to Parliament, the House of Commons and the Senate. It is very important to keep that in mind; it is direct. They do not go through a minister. As for a quasi-judiciary tribunal or other body, it must of necessity table annual reports, and specific reports on a given issue, but this is always done through a minister. That minister then tables the report on behalf of the agency or tribunal in question.

Senator Murray and I do not see eye to eye on his amendment, because Bill C-25 creates the Public Service Staffing Tribunal from scratch. This tribunal will have the responsibility of examining complaints and grievances relating to internal competitions but not external ones. All appointments to the Public Service will be the responsibility of the Public Service

Commission. Appeals relating to these appointments may be filed with the commission. Once an internal appointment has been made, the tribunal will have the responsibility of settling any dispute or problem. It is important to keep this in mind.

Now, Bill C-25 describes the Public Service Staffing Tribunal, in all its operational details. The Chairperson of the tribunal is to be appointed by order-in-council, with the approval of both the House of Commons and the Senate.

The reason this tribunal is different is that it has quasi-judicial status, which is very unusual. It is neither an agent of Parliament nor an officer of Parliament. It is an administrative tribunal with a status different from that of an officer of Parliament. I believe that the mission of the staffing tribunal will be to hear complaints related to abuses of power and to internal appointments. I repeat: the Public Service Staffing Tribunal is a quasi-judicial tribunal. The process for appointing the chairperson of the staffing tribunal, under Bill C-25, is the same as for other chairs of quasi-judicial tribunals. I have a long list of these quasi-judicial federal tribunals, from the Canadian Nuclear Safety Commission to the Veterans Review and Appeal Board Canada. If the honourable senators are interested, I can distribute this list.

Like the other tribunals, the Public Service Staffing Tribunal must report annually to both Houses of Parliament, through the appropriate minister. I cannot present a report and lay it on the clerk's table; the report must be presented by a minister. That is the difference. Parliament can receive reports on the tribunal's decisions.

The Public Service Commission will continue to protect the merit principle — period. This situation is very different from the one that existed until now. Until today, the Public Service Commission heard the grievances of public servants who appealed the way they had been treated by their employer or during a competition. The Public Service Commission will no longer have this responsibility. The tribunal will hear these cases. It is very different.

Back to my main point, the chair of the commission and the chairperson of the tribunal are not officers of Parliament. They do not have the same status. The Auditor General, Ms. Fraser, is a classic example. When Ms. Fraser tables a report in Parliament, we receive it and read it carefully. If a Privacy Commissioner or a Commissioner of Official Languages gives advice to Parliament, we must do the same thing and, often, take note of the advice we receive. These are not ordinary tribunals. They have a special status. If the Chief Electoral Officer, Mr. Kingsley, says something should be changed, we listen to what he is saying. I think his recommendations will be carried out. I regret that these people are ignored and do not come to the Senate and the House of Commons often enough.

I knew a former commissioner, John Grace. During his seven-year mandate, he was never invited to Parliament and never appeared before a parliamentary committee. It is hard to understand. I knew others who came often. Ms. Fraser, the Auditor General, often reports to the Standing Committee on Public Accounts and the Senate Committee on National Finance,

chaired by my colleague, Senator Murray. We regularly meet with the Commissioner of Official Languages and have established a good relationship. We are starting to think that we could listen to the advice of these people to improve a bill presented to Parliament. That is the case with Bill C-25. We will try to improve the bill by following the advice of the Commissioner of Official Languages, Dyane Adam.

As for the motion in amendment, I must say that I cannot vote for it, because I think it distorts the purpose of the public service tribunal. The tribunal is not an agent or an officer of Parliament. It is a servant.

Since 1867, there has been separation between the judicial branch, the legislative branch and the executive branch. This must be respected. A quasi-judicial tribunal such as the public service tribunal must not be considered an officer of Parliament, for the simple reason that it must be separate from us. This tribunal will have to administer legislation that is quite difficult and complex, and I recommend, honourable senators, that you not approve this amendment, because to me, it is inappropriate.

• (1520)

**Hon. Lowell Murray:** Since the new Public Service Staffing Tribunal will perform duties that are within the purview of the Public Service Commission under the existing legislation and since the commission reports to Parliament, should the same relationship to Parliament not apply to these duties?

Under the existing legislation, the Public Service Commission must report to Parliament on how it carries out its duties, including those in the bill. These duties will now be the responsibility of the new tribunal. That is why I am trying to amend the bill so that Parliament will have the final word, once again, on this new body.

**Senator Gauthier:** The Public Service Commission is responsible for all appointments. It must report regularly to Parliament. It had the flexibility to do a number of other things but, as a result of its new duties, it is now limited to overseeing appointments.

I understand the process, and I agree that this is a de facto situation that there will be no conflicts of interest. I have always been uncomfortable with a commission that, on the one hand, was responsible for staffing and, on the other, could hear grievances. I have never understood how it could have this dual nature or wear two hats. Now, it has an important duty.

There is always a risk that the new tribunal and the commission, which will both report to the House of Commons and the Senate each year, will experience some stressful situations. There will be problems to resolve. There is a five-year window to try to modernize this process.

This modernization has been in the works for at least 30 years. I have sat on almost all the committees that considered it. Lambert, Davignon, Fickelman, everyone agreed on new legislation that is upsetting some people. This bill is a step in the right direction. I would not want to destroy it or lose it, since it is good legislation.

[ Senator Gauthier ]

[English]

**Hon. Rose-Marie Losier-Cool (The Hon. the Acting Speaker):** Senator Stratton, do you have a question?

**Hon. Terry Stratton:** I should like to move adjournment after Senator Day has finished.

**The Hon. the Acting Speaker:** Senator Day, do you wish to speak?

**Hon. Joseph A. Day:** Since I will be speaking against the motion as well, and since we have only heard speakers opposed to the motion, perhaps it is time to hear someone in favour of the motion, following which I will speak.

On motion of Senator Stratton, for Senator Comeau, debate adjourned.

[Translation]

## THE ESTIMATES, 2003-04

### NATIONAL FINANCE COMMITTEE AUTHORIZED TO STUDY SUPPLEMENTARY ESTIMATES (A)

**Hon. Fernand Robichaud (Deputy Leader of the Government),** pursuant to notice of September 23, 2003, moved:

That the Standing Senate Committee on National Finance be authorized to examine and report upon the expenditures set out in the Supplementary Estimates (A) for the fiscal year ending March 31, 2004.

**Hon. Lowell Murray:** I wish to inform the Senate that, if this motion is agreed to, I have called a meeting of the Standing National Finance Committee for next Tuesday, at 9:30 a.m. Our witnesses will be senior officials of the Treasury Board.

Motion agreed to.

[English]

## HERITAGE LIGHTHOUSE PROTECTION BILL

### THIRD READING

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** moved the third reading of Bill S-7, to protect heritage lighthouses.

He said: Honourable senators, Senator Forrestall is currently travelling with the Standing Senate Committee on National Security and Defence. It is on his behalf, and at his request, that I move third reading of Bill S-7.

**The Hon. the Acting Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.



**Senator Robichaud:** On division.

Motion agreed to and bill read third time and passed, on division.

## SPAM CONTROL BILL

### SECOND READING—DEBATE ADJOURNED

**Hon. Donald H. Oliver** moved the second reading of Bill S-23, to prevent unsolicited messages on the Internet.—(*Honourable Senator Oliver*).

He said: Honourable senators, I am pleased to rise to speak to Bill S-23, to prevent unsolicited messages on the Internet. I wish to address a rapidly growing problem facing the approximately 7.8 million Canadian households using the Internet.

An Ipsos-Reid survey released June 11 of this year found that, of an average of 123 e-mails received by Canadian Internet users each week, an astonishing 52 per cent were unsolicited messages, otherwise known as spam.

A recent *National Post* article stated that, two years ago, spam accounted for only 7 per cent of all e-mail, that now it accounts for 50 per cent and that by February it could amount to 70 per cent.

Honourable senators, the increase in the volume of unsolicited e-mail is creating a significant problem for businesses, consumers and, potentially, the future of the Internet.

Unsolicited commercial e-mail encompasses a wide range of Internet traffic. As a result, it is difficult to assign a specific definition to the concept. In a discussion paper entitled "E-mail Marketing: Consumer Choices and Business Opportunities," Industry Canada quoted Australia's National Office for the Information Economy's working definition of "spam" as "a communication that could not be reasonably assumed to be wanted or expected by a recipient." However, I am sure honourable senators have received, on their computers, e-mails about Viagra and enhancements of certain body parts. Well, that is spam. Therefore, it is with this understanding of the term that I present this legislation for the consideration of honourable senators.

• (1530)

What are the various types of spam that prompted me to introduce this legislation? The Public Interest Advocacy Centre made one suggestion. PIAC is a non-profit organization that provides legal and research services on behalf of consumer interests. On March 26, 2003, PIAC published a document that presented a breakdown of the different types of spam messages sent to Canadians. It found 33 per cent advertised products, like inexpensive ink cartridges; 24 per cent were financial offers of one kind or another; 18 per cent was advertising for pornographic or sex sites; 5 per cent were blatantly fraudulent or promoted scams; and the remaining 20 per cent were ads for various other things.

Canadians received these e-mails without asking for them. As well, there was no consideration for the possibility of minors being among the recipients of these sometimes vulgar messages.

Honourable senators, this is unacceptable. Most commercial mail received by traditional post comes from businesses that consumers already have a working relationship with, or from a charitable organization or from politicians, et cetera. I do not believe Canadians would tolerate pornographic magazine subscriptions or free edible underwear samples turning up in their traditional post each morning. I do not believe they would appreciate seeing their pre-teen daughter's name on the address box of a coupon book for diet pills and breast enhancements. I do not believe for a second Canadians would allow such damaging messages to enter their homes, yet this is precisely what occurs over the Web.

The Internet is both fluid and borderless. The Internet is pervasive. We all know of children, grandchildren, husbands, wives and colleagues who use the Internet every day. It is a popular form of communication and, as such, governments have been slow and indeed reluctant to enter and control this newest technological frontier. Most people recognize that Canadian laws alone will not solve this global problem. Honourable senators, I am the first to agree that only a multi-disciplined approach using effective technology, law enforcement, industry practices, and international cooperation can succeed in ending e-mail abuse. To that end, I have already spoken with companies like Microsoft. They concur that this type of holistic approach is the best way to proceed against the problem of spam.

It is time for the Government of Canada to step up and introduce tough legislation designed to protect citizens and ensure they enjoy the privacy and control over messages they receive through their e-mail. With this goal in mind I was prompted to introduce Bill S-23, which is the subject of my comments to you today.

An increasing number of countries are in the process of introducing or enforcing spam legislation. These countries include South Korea, Australia, England, the United States, Italy, and member countries of the European Union. In the Organization for Economic Co-operation and Development, 30 nations have tabled guidelines for international cooperation in protecting consumers against spam sent from other countries.

Canada, on the other hand, does not have laws, rules or regulations in place specifically designed to cut down on or at least track the source of unwanted commercial messages. Fortunately, this does not mean that Canadians are left completely vulnerable to attack. Part 11, section 430 of the Criminal Code of Canada provides legislation to charge people with mischief if they are caught sending large volumes of spam that interferes with critical computer systems. If convicted of this charge, a person may be sentenced to a maximum of 10 years in prison. However, many of the fraudulent e-mails sent over the Internet emanate from other countries, rendering the investigation and prosecution of these cases very difficult, but there is some recent jurisprudence that may be of some assistance.

In an Australian appeals case that came before the Supreme Court of Victoria in October 2000, a New Jersey based Internet publisher was sued in Australia — not in the United States but in Australia — for publishing defamatory remarks on his online magazine. The Australian court ruled the remarks were made within the Australian jurisdiction because that was where the message was downloaded. The ruling recognized that the publication of an e-mail took place at the location it was accessed, even if the sender did not particularly have that place in mind. When the presiding judge came to this decision, the appeal by the New Jersey company was dismissed. This ruling, I believe, is a precedent that makes Canada a forum of convenience.

Another problem with spam is protecting a person's private information while on line. As honourable senators know, there is a large black market operating on stolen credit cards, driver's licences, bank account numbers and other such information. In order to obtain this, the spammer sends a message to thousands of customers claiming to belong to a trusted corporation. The spammer writes that there is a problem with that company's electronic database and the recipient is asked to reply to the message with his or her PIN number, their address, their credit card numbers and other such information typed into the text. The spammer then uses these numbers to make other on-line purchases in that person's name.

An incident of this type occurred recently in the United States. On July 21, Reuters reported that the Federal Trade Commission charged a 17-year-old boy for using a fake America On Line Web page and spam e-mail to collect peoples' credit card information. In the report, the boy told recipients of his e-mail that they needed to update their AOL billing information. He instructed them to click on a link connected to a fake "AOL Billing Centre" Web page. When the page came up on their screen, recipients were instructed to enter their credit card numbers, their mother's maiden names, their billing addresses and social security numbers, bank routing numbers, credit card limits and AOL screen names and passwords. The boy then used this information to make thousands of dollars worth of on-line purchases, with other people's credit cards.

These thieves steal all of this by way of personal computer and the Internet. To try to combat this theft, the Working Group on Electronic Commerce and Consumers created "The Principles for Consumer Protection for E-commerce: A Canadian Framework." The working group, developed through Industry Canada, is composed of government, consumer and business associations. The principles introduced by the working group are another piece of legislation designed to protect Canadians from electronic attacks. Principle 7 states:

Vendors should not transmit commercial e-mail without the consent of consumers, or unless a vendor has an existing relationship with a consumer.

Unfortunately, this is only a principle and it is simply a suggestion that companies and spammers are not really required to obey. In order to convince Canadians their government is trying to solve the problem, compliance with the regulations must

be enforceable and mandatory. That is why I feel we need legislation like Bill S-23.

On January 1, 2003, the Canadian Personal Information Protection and Electronic Documents Act came into force. The act was written to protect information from being used by spammers and scam artists on the Internet. It also established a right to the protection of personal information collected, used or disclosed in the course of commercial activities. Under the provisions of the act, electronic mail addresses are considered personal information and therefore protected according to the act. However, like the Criminal Code, this privacy legislation applies only to organizations and persons located in Canada. The rules concerning the collection and the use of personal information varies widely from country to country, and because of this enforcement of the act is difficult at best and impossible most of the time. This is another reason for seeking a multi-disciplined approach to curb the spam epidemic.

• (1540)

There are countless examples of recommendations, guidelines, educational pamphlets and Web sites operated by Internet service providers, ISPs, that attempt to educate consumers on how to better protect themselves from spam. I say, enough of these lukewarm attempts. Bill S-23 will enable ISPs, law enforcement agencies and individual citizens to demand spammers to stop sending messages. The bill will also give Internet users the right to bring criminal charges and to take civil actions against spammers who do not stop spamming.

First, I will say a word on ISPs. Internet Service Providers are those companies who provide the link between an individual computer and the Internet. In one sense, the Internet is like a highway. In order to move your computer — or in this instance, your "car" — onto the highway, you use an on-ramp. ISPs are the metaphorical on-ramp. Like our highways, there are literally thousands of ISPs in Canada. Some, such as America Online, EarthLink, Bell Sympatico and Rogers, are large mega-corporations. Others are independently run, very localized operations — perhaps servicing only a few dozen customers.

There are three specific areas of my proposed spam control bill that I wish to bring to honourable senators' attention. Those are: the rules recommended for ISPs, the regulations required to control those who send bulk unsolicited commercial e-mail, and the penalties suggested for those who violate these laws.

As can you imagine, many Canadians willingly agree to receive certain commercial e-mail. Companies such as MSN, eBay, Victoria Secret and newsgroups that send out newsletters, subscriptions and catalogue notices to on-line customers will be able to continue doing so without fear of legal recourse under this proposed legislation. These e-mail messages are not spam; Canadians have requested them when they have registered on company Web sites.

Most companies realize that it is bad business to annoy customers and so there are provisions to allow customers to remove their names from a mailing list at any time. These provisions include, but are not limited to, an "unsubscribe" box located at the end of each e-mail. When the user clicks on the box,



a notice is sent to the company telling it to remove the customer's e-mail address from the company mailing list. Another method to let customers remove their names from a mailing list is to provide a link labelled "unsubscribe" in the advertisement. When a customer activates the link, an automatic e-mail is sent to the company's database and, again, the customer's e-mail address is subsequently removed from the mailing list.

The legislation I am proposing would prohibit only those e-mails sent without prior, explicit consent from the recipient. This is similar to the mandatory opt-in approach being used in the European Union. The best way to explain this confirmed opt-in approach is to use the Coalition Against Unsolicited Commercial Email's, CAUCE, published explanation and definition. CAUCE Canada is an organization created by Canadians to advocate for a legislative solution to the problem of spam on the Internet. CAUCE Canada describes the opt-in process as occurring when — and I quote:

...an e-mail address is provided to a company as an addition to a mailing list. The owner of the address is notified of this action, and asked to confirm they actually wish to be subscribers to the list. Only when confirmation is received is the address actually placed on the mailing list.

This way, only people who wish to receive the information will sign up to receive it. By using the opt-in approach, spam is easily identified. If the sender does not have permission, his or her message is unsolicited e-mail and prohibited under Bill S-23. It could be as simple as that.

The legislation requires also that a no-spam list be created. This will provide a database where users can state their desire not to receive any unsolicited commercial e-mail. The list will be protected and updated by a regulatory association. In order to enter an address into the no-spam list, a user would log on to a Web site and fill in a registration form. When the form is completed, it is downloaded to the database. Users would be given a password to allow them future access to their file. This way, if a user wants to be removed from the no-spam list and to receive commercial e-mail once again, he or she may do so.

All e-mail marketers would be required to respect the confidentiality of the database. This means that no commercial e-mail could be sent to a user who has registered on the no-spam list. Spammers would be charged if they were found to have done so. Similarly, a proven violation of the confidentiality of the no-spam list would result in charges being brought against the violator. In other words, if the regulating association were found to be selling or trading addresses on the no-spam list it could be subject to both criminal and civil penalties.

Honourable senators should note that Bill S-23 is designed to be very protective of Canadian children. In order to do so, the no-spam list would include an extra option for parents. Parents would be able to mark their children's address or addresses as belonging to a minor and have them stored in a designated area of the database. Penalties for sending pornographic, fraudulent or

otherwise inappropriate material to these addresses are more severe for the violators.

Businesses and ISPs are beginning to address the problem of spam, but it is difficult to find a way of filtering junk mail without accidentally blocking messages that the user wants to receive. There is no filter on the market today that can clearly identify junk mail from wanted mail. The majority of Canadians agree that spam is annoying. An Ipsos-Reid survey indicated that four out of five Canadian Internet users — 83 per cent of those surveyed — have registered to receive e-mails from at least one Web site. This is a 39 per cent increase from December 2001. The most popular sites from which to receive commercial e-mail are news and information, entertainment, travel, and health and fitness Web sites. By allowing Canadians the right to opt in, companies could adapt their e-mail messages to resemble the magazine industry — only those who subscribe receive the information.

In addition to the opt-in approach, ISPs have been developing various methods to filter out spam before it reaches their customers' inboxes. These techniques range from blocking e-mails that contain specific words, such as penis, to encouraging customers to report spammers to their ISPs. Under the regulations imposed by this bill, each e-mail sent to a customer must have a valid return address and sender name. Each e-mail must also contain correct header and router information. As honourable senators know, a number of the spam e-mails have neither header nor router information. Any e-mail coming through an ISP system could be screened for these items. Those messages that do not qualify would not be passed on to the customer.

Internet industry stakeholders have already taken aggressive steps to cut down on volume of unsolicited commercial e-mail. I am aware that providers of free e-mail services have adopted stricter policies to limit the number of e-mails sent by their subscribers. I applaud these efforts. Unfortunately, they have not been effective in stopping spam from reaching in-boxes. Therefore, a multidisciplinary approach to spam is required to effectively stop it.

Similarly, Bill S-23 deals with a relatively hidden practice — that of spammers harvesting or collecting e-mail addresses from the Internet. This is done by placing a specialized program onto a Web site. Most often, the programs are called "bots" or "cookies." Every time a person enters a Web site where one of these programs has been placed, the bot or the cookie records the person's e-mail address and other such information. The spammer can then compile lists of millions and millions of e-mail addresses and sell them to others for a profit. To solve this problem, there is a clause in the bill before honourable senators that prohibits the use of such software, such cookies.

• (1550)

In addition to this clause, there is software available that identifies and deletes these bots and cookies. It can be found at [www.ad-aware.com](http://www.ad-aware.com). The program itself is free, but because some Internet users are not experts at downloading and installing such programs, its effectiveness against spam is somewhat lessened.

Since most spam is sent from another country into Canada, the bill before honourable senators has a clause dealing with those who spam Canadians from other countries, such as Nigeria. Clause 14 of the bill states:

If a person initiates spam from any place in a manner that allows it to be received in Canada, and it is received by another person in Canada, then, for the purposes of section 11,

(a) the person who initiated the spam is deemed to have sent it to the other person, whether or not the person had a specific intent that the other person should receive it, and whether it was initiated within or outside Canada; and

(b) the act of sending is deemed to have been effected in Canada.

Honourable senators, by this language, the bill is intended to eliminate the fear of spammers creating havens in other countries. This clause was included in the bill as a direct result of the Australian defamation case that I described to honourable senators earlier in my remarks.

The penalties suggested in the bill for those who send spam vary. General violations, found in subclauses 11(a) to (h) as well as to 12(a) to (e) are liable on conviction to a fine not exceeding \$500. These offences include: sending spam that is not identified as such; sending spam to an e-mail address that has a no-spam list on it; and sending spam that does not contain a means for the recipient to opt out of future messages.

The fines and punishments are harsher for spammers who target children with sexually explicit messages and other forms of spam. It is suggested that these spammers could be charged with a fine of up to \$5,000 and/or imprisonment for a term not exceeding one year.

Finally, spammers found to be sending pornographic or fraudulent e-mail will be subject to prosecution under subclause 13(2) of the bill. This subclause includes penalties of \$1,000 fines, a jail term of up to six months, or both a fine and a jail term if the crime is particularly repugnant.

When Bill S-23 comes into force, Internet service providers will be required to have a licence granted to them by an independent, self-regulating, not-for-profit association. A condition of this licence would be to continue blocking and filtering all commercial messages. ISPs would be prevented from selling or trading subscriber e-mail addresses to marketers, regardless of whether or not those subscribers were on the no-spam list. Any business or ISP allowing solicitations of their clients' addresses without documented proof of consent would be subject to criminal charges.

There are penalties for ISPs found to be in violation of these regulations. ISPs that violate these regulations would have their licensing and operating privileges revoked. Fines for ISPs that repeatedly allow spamming of their customers are outlined in the bill. It is suggested that these fines not exceed \$500.

Honourable senators, it is important to note that there are clauses in Bill S-23 protecting ISPs from being sued for damages. As the old saying goes, "Don't shoot the messenger." Consumers must be aware that some spammers may develop methods of circumventing filters and measures put into place to block bulk e-mail.

Eliminating spam will not be an easy task. However, with the aid of the Canadian public, Internet service providers and the Canadian government, spam can be reduced from a problem that consumes a great deal of time and money to a minor annoyance.

In order to demonstrate how much spam costs the population, I will quote American Democrat Senator Charles Schumer, one of the two senators who represent New York. Senator Schumer recently introduced an anti-spam bill into the U.S. Senate. During the introductory process the senator said:

Ferris Research estimates that spam costs businesses in the United States of America \$10 billion a year from a variety of sources:

- I. Lost Productivity: This costs business an estimated \$4 billion a year;
- II. Consumption of IT resources: Staff time and equipment purchases like more powerful servers, increased bandwidth and disk space costs businesses \$3.7 billion per year;
- III. Help Desk Incidents: Efforts to eliminate spam or locked in-boxes cost businesses \$1.3 billion in help desk activity per year.

The situation is much the same here in Canada. Some estimates indicate that spam costs Canada more than \$1 billion each year.

Honourable senators, this is precisely the reason I am proposing Bill S-23. In spite of the best efforts of ISPs, the spam problem has not been solved. In spite of guidelines and polite reminders of Internet etiquette, the spam problem has not been solved. In spite of increased attempts at consumer education and the development of filtering software, the spam problem has not been solved.

By introducing this private members' bill into the Senate, we are sending a strong message to spammers: "Not in our country."

**Hon. Jeremiah S. Grafstein:** Honourable senators, I followed with great interest what Senator Oliver had to say.

How would this proposal impact small businesses that now use the Internet to get out their message? Put another way, would this bill put those who are already entrenched in the Internet, such as eBay or Amazon, in a preferred position because they already have their customer lists and consent. Therefore, would the bill provide an unfair disadvantage to new start-ups, particularly in Canada, who use spam as a method of increasing or starting up their business on a cost-effective basis?



**Senator Oliver:** Honourable senators, this bill would in no way interfere with a small or start-up business. There is no advantage given to an existing business such as eBay.

If you and your family do not want to receive a call at home when are you having your dinner, you can now register to refuse those calls. That does not mean that eBay or a start-up business will not have a better chance. You have the right to opt out. Even eBay cannot contact you if you opt out.

There is no advantage whatsoever to an incumbent or someone who is already there with the list.

[Translation]

**Hon. Jean Lapointe:** Honourable senators, I listened very carefully indeed to Senator Oliver's speech, and not once were computer viruses mentioned. My question is the following: Can a virus make their way into a computer through unsolicited e-mails?

I take this opportunity to caution the honourable senators who are listening in against a very dangerous virus that is currently circulating. It is called Microsoft and presents itself in the form of an attachment containing an update.

[English]

It says, "Use this patch immediately." Never open that page. You will be seriously infected.

Do viruses come with spam?

**Senator Oliver:** The answer is clearly yes. Many computer viruses come with spam. That is why you should not open spam.

The difficulty is that some spam messages that appear on the computer look innocent. They may say, "Dear Don, I need your help," or "Dear senator, please open this. I read your speech. Please help me." It is opened, and suddenly there is a virus. There is no way of knowing.

The answer to your question is yes, spam messages often contain viruses.

**The Hon. the Speaker:** It is Wednesday. I would like to see this item adjourned, if that is okay, Senator Robichaud?

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, today we would like to continue with all the items we have on the Order Paper.

[Translation]

I suggest that we seek consent to authorize those committees sitting today to do so even though the Senate is sitting.

• (1600)

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, we on our side have no objection to committees sitting today. At the same time, I would like to

reassure all honourable senators that no final decision will be made about any specific item on the Order Paper that is of particular interest to them.

[English]

**The Hon. the Speaker:** Before I ask for leave, I will hear Senator Prud'homme.

**Hon. Marcel Prud'homme:** Honourable senators, this goes directly to the subject matter; either we absent ourselves and go to committee or perform our duty in very important debate here. I pay attention to every item out of respect for my colleagues, because it is the only way to learn on subjects where I need more knowledge.

However, I have my duty in the Banking Committee. If I do not go to the Banking Committee, I know what vicious people have done to me in the past. They will say, "He has to be on the Foreign Affairs Committee," for which I have asked for nine years. I was deprived. Now I am a member of the Banking Committee and they will say, "He will not show up." I will be considered to be absent from an important committee at four o'clock. That is where my duty calls; but I cannot let certain items here go without listening and commenting just because the rule has been intelligently made to allow committees to sit. How many times will we be nice to each other and say, "Okay, they are important items and out of respect, senators should be present?"

I will never mention senators who are absent. I am here; and the senator, with all his kindness, is helping me in my reflections, but he makes me a little bit more furious by saying, for instance, that if there are two matters of great interest to me under my name, he is ready. I appreciate his courtesy in saying that on those two items we will adjourn. Thank you very much, Senator Kinsella, but I am interested in listening to other debates. Some of them are very important to Senator Joyal and to Senator Grafstein, who has two items. I can name you all, and I will give you all equal credit, equal merit and equal respect. I do not pick and choose. The rules say that no earlier than 3:30, and therefore committees are at four o'clock. Now you are putting us in the embarrassing position of saying no to colleagues who are waiting to speak. They can speak tomorrow.

**Senator Kinsella:** No, I cannot.

**Senator Prud'homme:** If the honourable senator cannot speak tomorrow he should have asked me to accommodate him. He is helping me in my decision to say no. It is like another fine gentleman who today said, "next sitting." I am eager to see who will be here tomorrow for other items, and next week.

We have a rule, honourable senators and with all due regret, I will say no.

**The Hon. the Speaker:** Honourable senators, agreement would have to be from every senator. Accordingly, we have no agreement.

Resuming debate, Senator Poulin.

On motion of Senator Poulin, debate adjourned.

## BUSINESS OF THE SENATE

**The Hon. the Speaker:** Senator Gauthier has asked for the floor to request leave.

[Translation]

**Hon. Jean-Robert Gauthier:** I would like to make a comment on Bill C-25 and on Senator Murray's amendment. I would like to rectify my comments in order to clarify them.

I said that the President of the Public Service Commission has to be appointed by the governor in council with the approval of both Chambers. When it came to the tribunal I got a bit confused. In this case, it is only an appointment by order-in-council, and Parliament is not involved.

[English]

**The Hon. the Speaker:** Is it agreed to add Senator Gauthier's comments to the record on his exchange with Senator Murray?

**Hon. Senators:** Agreed.

**Hon. Marcel Prud'homme:** Honourable senators, we were supposed to adjourn to go to committee. I did not give consent for the committee to start sitting at four o'clock. The Banking Committee is sitting, and it needs permission to sit, to my best recollection. We usually get up at 3:30. We let it go until 4, because we could still run to the Banking Committee, or other committees. The honourable senator asked, and I said no. Maybe I should have said "non," but my no is equal to my "non." I do not see why it should proceed — agreement or not.

[Translation]

**Hon. Fernand Robichaud (Deputy Leader of the Government):** On Wednesday, we ask whether debate on all items on the Order Paper can be adjourned in order to allow committees to sit. The committee notices indicate a specific hour, but they also indicate "when the Senate rises."

**Senator Prud'homme:** But not before 3:30 p.m.

**Senator Robichaud:** We did not obtain consent, so the committees do not have leave to sit. We will continue our work in the chamber and the committees will sit once the Senate has risen.

[English]

## AMERICA DAY BILL

### SECOND READING—DEBATE ADJOURNED

**Hon. Jeremiah S. Grafstein** moved second reading of Bill S-22, respecting America Day.

He said: Honourable senators, I rise to speak on the second reading of Bill S-22, a bill to designate each September 11 hereinafter as "America Day" in Canada. Surely, honourable senators, September 11, 2001 was burned and branded in all of our memories as one day that changed the world. It will go down as yet another "day of infamy." No doubt, the American world

has changed. No doubt, the Canadian world has changed. The world has changed. Proof is before us every day. Read any newspaper in the world today, or daily, and each will resonate forcefully about 9/11, the impact of 9/11.

So, is it not fitting to mark September 11 as America Day in Canada? September 11 should be a day of sober commemoration and sober reflection, and even celebration of our common values, and a clear exegesis of our complex differences and the nuances of those differences.

Some have even argued that we should separate ourselves from the United States. They argue that we should deploy our so-called "soft power" to turn away from America and its so-called "hegemonic" reach, and so side with others, move to other allies. We should wean ourselves off the United States, they argue. Yet, we are joined with the United States by more than geography. We are joined by blood ties, personal relationships, and yes, trade, and yes, culture, and yes, we are joined by regional ties, by ties between our working unions and, of course, by business and even charitable ties and beyond.

We discovered recently that there are millions of Americans of Canadian origin living in every corner of the United States — from Alaska to Florida, from Maine to California — and we, in Canada, do not even know how many. I believe, and there is no doubt in my mind, that Canada's largest diaspora lives in the United States and we still do not know how many. Yet, we are joined by a common desire, with the United States, for the future democracy and the rule of law at home and abroad. Our governance principles originate from the same profound Anglo-Saxon sources of checks and balances and separation of powers.

Our governance models share a healthy scepticism of the human condition when it comes to the exercise, indeed the temptations, of power. Together, Canada and the United States have helped construct international mechanisms to foster peace and prosperity — the ILO back in the '30s, NATO in the '40s, OSCE, OSCE and many others. We are joined by our common interest in a peaceful and prosperous continent as a bright beacon to the globe. We should not be deterred when that light flickers or flares from time to time.

• (1610)

On September 11, not only was America attacked, but also Canadians were murdered — 24, and two spouses. Every faith — Christian, Jewish, Muslim and others — shared equality that day. They shared equally murderous treatment. It was an act of ultimate brutality. It was an act against innocence. It jolted and unhinged civil society around the world.

Senator Dandurand was an august leader of the Senate after World War I. His majestic portrait adorns our hallway outside this chamber. After World War I, he became the President of the League of Nations in Geneva for a term of office while a sitting senator. During his tenure, he inaugurated the first codification of international law at the League of Nations. That work was never completed. He proclaimed 70 years ago that our Canada House, separated as we were by the Atlantic Ocean, was safe and secure from the flames of Europe.



What Senator Dandurand said is no longer true. Oceans provide no protection. Today, we are interconnected with the world. No place, no space, is safe or secure around the globe.

Honourable senators, I propose September 11 as a day of reflection, a day to re-examine the past and what brought us to this frightening turn of events, and to reflect on our future. September 11 was a watershed in modern world history, and we still cannot measure its reach or its meaning.

Those of us who believe that Parliament is the supreme arbiter of public opinion also believe it is up to Parliament to allow the public to interact with debates, especially those of historic import. Let us debate; let us argue; let us agree and, of course, let us disagree. However, let Parliament — let the Senate — speak. Hopefully, senators will speak up for themselves and listen with care, as we do in the Senate, for public opinion.

There are questions and questions. Who is Canada's best friend and ally? Do we have one? I believe a predominant number of Canadians would answer: "The U.S.A." Let us discover what the public, informed by our debates, thinks. I propose that we invite Canadians to log on to our recently launched Senate Web site and note their views during the Senate debate so we can inform ourselves of their views on this bill. We can do this readily and easily by transforming our Web site into an interactive one so that interactivity with the public can be feasible on this and future debates.

As for Canada-U.S. relations, the Canadian public has always led politicians. I witnessed that in our joyous visit called "Canada Loves New York" on November 30, 2001, after 9/11, when over 26,000 Canadians voluntarily gathered from across Canada to take up Mayor Giuliani's invitation to help America by visiting New York City.

I saw that when thousands upon thousands of Americans were marooned and Canadians spontaneously opened their homes and their hospitality to them in Eastern Canada after 9/11.

I saw that this summer in Toronto at the Rolling Stones concert, Toronto Rocks, when hundreds of thousands of Canadians joined tens of thousands of Americans who came to Toronto to help erase the inflated SARS global message that had so scorched Canada as a tourist destination, devastating Canadian workers and their businesses from coast to coast.

By the way, we saw Americans and Canadians by the thousands munching healthy Canadian barbecued beef, all televised by the American media. That message went right to Congress.

Honourable senators, the Canadian public and the American public will surprise you every time. Commemorate September 11 and we, honourable senators, may be surprised by the response of the average Canadian and average American.

We have yet to learn the lessons of September 11. We have yet to ensure that history will not repeat itself. Was September 11,

2001, a continuation of the First World War of the 21st century? What future can we expect from cults who believe in the murder of innocents? What can we do when states appease or collaborate with these cults or groups within those states? What can be done? We should listen; we should learn. This I do know: Principles and people march best when they march together.

Let us mark September 11 as "America Day." While some may seek to rip us apart, nothing can change our geography. Over 150 million bilateral trips occur annually across our common border each and every year. Why is that? Is it because of common animosities, or common interests?

Nothing can change our common values. Nothing can change our common bloodlines. Nothing can change our bonds of friendship. Nothing can change our deepening mutual socio-economic interest in each other as closest neighbours.

Yes, we are each other's largest trading partner. We do 87 per cent of our trade with the United States, and that number is growing. There is much more. Yes, we enjoy many distinctions and differences. Yes, we are proud and independent Canadians. Yet these should not preoccupy and obsess us to the detriment of the common good. Let us remember that Canada was built on the principles of peace, order and good governance. Peace and order cannot be separated from good governance. Good governance cannot be separated when we share more in common than even some dare to describe or suggest.

I am proud of our differences. I cherish our independence. I relish our distinctions. Yet, our claims of sovereignty and independence ring hollow if we rely on others and fail to bear the burdens of the costs of sovereignty. We should not neglect to bear the costs of our own sovereignty and our own security. If we are confident, we should not be afraid to treat or challenge our American friends in a civil matter that is the benchmark of Canadian society. We should not be afraid and not be ashamed to trumpet our common principles. We should not be afraid to praise America as a bulwark of democracy for fear civil criticism of them or ourselves. This is the very rationale of Parliament, to express ourselves fully, fairly and thoughtfully as senators on the raging issues of the day from the particular perspective of senators and this Senate.

Last week, Robert Fulford, Canada's pre-eminent cultural critic in English Canada, echoed Paul Johnson, the brilliant British journalist and outstanding historian, and Jean François Revel, the French writer and philosopher, who all agree that hypocrisy in Canada and Europe condemning all things American has become the conventional wisdom of the anti-American chorus of critics. I call it the "anti-American camp." Revel called it "l'obsession anti-Américain." Johnson said: "It is based on the powerful and irrational impulse of envy — an envy of American wealth, power, success and determination." Robert Fulford concludes that in France and Canada anti-Americanism is like the unique French beverage absinthe. He said: "It's exciting, it's satisfying and it's built into cultural history. But it does tend to leave you blind."

This week, Matthew Fraser, the editor of the *National Post*, in his new book *Weapons of Mass Destruction*, argued insightfully that global trade and culture have been a healthy harbinger of the growth of democracy around the globe.

Honourable senators, can we not burrow beneath the shallow rhetoric to uncover the deeper malaise in our Canadian psyche that seems to seek refuge and comfort in the Freudian concept of "transference," blaming others for our own deficiencies, especially our American neighbours? It is so easy now to gang up on America. It is tougher to catch the ear of America when we use ill-considered diatribes.

Honourable senators, I hope this bill will inaugurate the debate. Let us, in the end, support the bill that marks September 11 hereafter as "America Day" in Canada. Annually, then, we can carefully calibrate and celebrate — if we must, if we can — the complex web of close relationships and differences with the U.S., differences with that global dynamo to the south, the United States of America.

• (1620)

Honourable senators, I know we will be civil and insightful. Canadians need a thoughtful framework in this broad debate. Canadians want to be informed. They want the Senate to elucidate. We want the public to understand the issues clearly. We want the public to follow this debate. We must live up to our reputation as a chamber of careful thought, which we and the Canadian public so proudly deserve.

I should now like to adjourn this debate in the name of Senator Eytan, unless there are questions.

**Hon. Laurier L. LaPierre:** I have a comment or a question. Is that permissible? The honourable senator's experts are, to my mind, rather insignificant, and consequently I will remove them out of my head. Matthew Fraser has nothing useful to tell anyone on the planet Earth.

As well, I should like to remind the honourable senator, if I may, that "America" is a hemisphere; it is not the United States. In the hemisphere, there are two continents, the north and the south. Consequently, when we talk about America, we are referring to the people who live here, the people who live in the United States, the people who live in Mexico, and the people who live all the way down to wherever it is that it ends.

I make that point because I think that is very important. I am not in favour of this. However, I am in favour of utilizing September 11 for the essential lesson it gives to all of us on the planet.

I would caution the honourable senator against making a mistake similar to the one that so many people make — that is, labelling anyone who criticizes Israel as being anti-Semitic. When

people criticize the Bush administration and certain things American, they are now being labelled anti-American, and this is an opinion that is indoctrinated in the newspapers that belong to a certain owner in Canada who shall remain nameless.

My question is this. Why does not the honourable senator, after speaking so eloquently about the lesson of September 11, have us all spend a day thinking about the necessity for us all to battle terrorism, wherever it is, now, yesterday, and tomorrow?

I would ask the honourable senator to consider calling his bill about September 11 "Anti-terrorism Day," so that all Canadians and all of humanity can come together and think seriously of this horrible, horrible thing that is terrorism. It is not only specific to America. Hundreds of thousands of Black people have died since the 1900s in Africa. Chileans have died. Other people have died all over the planet because of terrorism.

If the honourable senator wants that day, which I think he should, it is not "America Day." It is not only America that suffers terrorism; terrorism is everywhere. Consequently, if the honourable senator would sit down and think about my suggestion, Anti-terrorism Day and our responsibility in battling it — think locally and act globally, as we used to say in my youth — then I think the bill would pass unanimously within two seconds.

**Senator Grafstein:** Again, thank you for that elaborate question. Let me just correct one factual comment. The honourable senator can dismiss Matthew Fraser, as he has, if he chooses to do so. I think it would be more useful for the senator to read his book before he dismisses him. Having said that, I do not think it is fair for the honourable senator to also dismiss Robert Fulford, Paul Johnson of the U.K., or Jean François Revel.

Having said that, the honourable senator made a very valid point that I think affirms my position. He says that this day should be called something else but not "America Day," and he makes my point that America is a continent. It includes the United States. It includes Canada. To my mind, this emphasizes exactly what I am saying. What happened in the continental United States deeply affected Canadians as well as Americans.

As for my views on terrorism, I do not think I have to stand up in this Senate and talk about them. It is deeper than terrorism. It goes to the very structure about how to combat terrorism. If the senator chooses, as he has so eloquently done, to disagree with my argument about this, so be it. I shall have an opportunity to respond at the end of the day. I welcome his comments and his passion.

[Translation]

**Hon. Jean Lapointe:** Honourable senators, I would like to congratulate Senator Grafstein on his courage and his work in the Senate. I consider him one of the most serious and most dedicated senators. Nevertheless, when it comes to the Americans, I would have great difficulty in creating an America Day.



Since early childhood, I have admired the American people greatly, and admired their patriotism as well. We do not often see a Canadian put hand over heart during the national anthem. In the United States, we see it often. I have great admiration for the black people who rose up out of slavery, thanks to people like Kennedy and others.

But this neighbour, which calls itself our great ally, because of one mad cow, has victimized our farmers and squeezed hundreds of millions of dollars out of them, in the West, in Quebec and elsewhere.

In the matter of softwood lumber, if we do not take the economic measures they want, we get dragged through the mud. I have many objections to declaring September 11 America Day.

That said, I cannot hide my great admiration for the people of the United States, but I have reservations about the politicians who are currently leading them.

[English]

**Senator Grafstein:** I want to get underneath the issues. Again, I thank the senator for his comments. As to the issues of Canada-U.S. trade, I am as aware of those issues as anyone else in this room. I have been working on that dossier since the day I first came to the Senate, 19 years ago, most recently the last 10 years as chairman of the Canada-U.S. Inter-Parliamentary Group.

We should not bring the Speaker into this, but the Speaker, in his previous life, was also a very active member of this committee. He will understand, as will other members who served on the committee, that those trade problems represent less than 5 per cent of our total trade with the United States. They are real problems, and they affect jobs in Canada.

I discovered, to my amazement, that if you go down to the United States and invite them up here at the congressional level, you get a different picture than you get from the executive. Their executive is cool to our executive. However, there is a different picture and a much more open and understanding exchange. I hope this bill will foster a deeper respect and a deeper exchange between parliamentarians.

The point I should like to make to the honourable senator, which he might find of historical interest, is that I came across the question of Americans of Canadian origin in the United States, and they are in the millions, because of the work done by the Quebec Government. The Quebec government has done a lot of research about the impact of migration from Canada to the United States. Many of the borders, many of the cities, many of the states, many of the counties have French-Canadian names. Why? Because of the admirable discoveries that were made. As a matter of fact, the Lewis and Clark expedition that led to the United States going from coast to coast was led by a French Canadian.

I would hope that, in the course of this debate, we would raise this issue as an important issue to American consciousness and be able to say, "Look, there are deep roots in the United States." I discovered, for example, that the new co-chair of the Canadian-U.S. parliamentary group is named Senator Craypo,

spelled C-R-A-Y-P-O, and I said, "Excuse me, sir, that is a French Canadian name." He said, "Yes, it is, but I have never really checked the origins of that." I reminded the new senator from Idaho of the possible deep roots that he shares with Canadians. This bill will play an important role in having a better audience with congressmen and senators, one at time.

• (1630)

Last weekend, I was in Georgia for the wedding of an American congressman's son. I was treated as a visiting dignitary in the Deep South. They were surprised to see a Canadian come all the way to the Deep South. I talked to them about Canada and the U.S. I pointed out that towns and in Georgia were named after French Canadians, and they did not know that. If anyone tells me that this is not a useful bill in Canada and that this is not a useful bill in the United States, I will tell them to wait and see what American congressmen and senators say about it.

I told them that I would introduce this bill and they welcomed the news. Those senators and congressmen, who are interested in Canada and want to heighten our awareness of Canada in the U.S. so that we can help solve these problems, want to have something to take to Congress. They will watch this debate. I will take this debate and ensure that it becomes part of the congressional record because I think that it is important for Americans to understand that there are Canadians who are proud to be Canadians and yet understand the role and the leadership of the United States. We can be both. As another senator has said, "I am a strong Quebecer and I am a strong federalist." Well, I can be a strong Canadian and I can also believe that America has much more to give than we give them credit for.

We can solve some of our Canada-U.S. problems, which are deep, by fostering this kind of thoughtful and coherent debate, unlike debate in the other place. I welcome this debate and the comments of honourable senators.

**Hon. Anne C. Cools:** I have been listening to the Honourable Senator Grafstein with interest, and I am beginning to find great stimulation by his comments, although I have not given much thought to the bill. In Europe, every Frenchman, every German and every Italian is also a European. The term "European" is used interchangeably with each sovereign term. In Canada, the Constitution of Canada was formerly the British North America Act because Canada used to be called British North America.

When I was a little girl, the term "American" applied to all of the inhabitants of the continent of America. If someone wanted to specifically refer to people from the United States of America, we called them "Yankees."

Senator Grafstein is raising a profound and important point — the enormous ties and connections that have existed between Americans and Canadians. I would like the Honourable Senator Grafstein to explain more about this point. In addition to attempting to bring forward a profound dialogue and debate on the relationship between the two countries, is he not also attempting to resuscitate the use of the term "Americans" to apply to all peoples who live on this fine and enormous continent of ours, America?

**Senator Grafstein:** The answer is yes.

**Hon. Marcel Prud'homme:** Honourable senators, I will certainly participate in this debate. I am almost tempted — and I repeat, almost tempted — to make my speech right now. A true debater should not need staff and researchers to prepare his words. Rather, he should speak to the issue off-the-cuff and answer point — by point what Senator Grafstein has said.

The honourable senator said that he would ensure that the debate in this house would be on the record in the United States. That sounds like a kind of blackmail to me in that we had better tone down in case we are badly perceived over there. I do not like this approach.

I will put another motion on the record about what the honourable senator was kind enough to say to the American congressional subcommittee on human rights. I do not think Canadians would appreciate that coming from a colleague of ours who attended a committee in the United States and also attended the European OSCE. I have the record of the things that he said and I will put them on our record. You have to be careful when you talk about the United States.

Honourable senators, I am comfortable in speaking about this. In 1993, at the request of both Speakers, I wrote a full report on parliamentary associations. In 1998, both Speakers and both boards of internal economy asked me for a repeat performance, which I did with Mr. Chuck Strahl. I worked hard and I convinced Mr. Strahl to vote for the budgets of the parliamentary associations. I said that if we were ever to disband parliamentary associations because of the criticisms and the press, one parliamentary association should remain — the Canada-U.S. Inter-Parliamentary Group. Everything I have seen over the years of our relationship with the Americans, first as an elected person and now as an appointed person, has convinced me of that.

We have no lessons to learn. I totally agree with the words of Senator Lapointe and Senator LaPierre that one can disagree without immediately being perceived.

Senator Grafstein is always ahead of us. This bill was read the first time yesterday. We cannot prejudge what this house will do.

I think the time has come to put some fresh air into the debate on parliamentary associations. In the next Parliament, I would hope that my honourable friend will do as I did, because a change is always good, and release his position as Chair of Canada-U.S. Inter-Parliamentary Group. That is not to say that the honourable senator is not doing a fine job, but some people hang on too long and these associations need renewal in each Parliament. That has nothing to do with the intelligence that we recognize in the honourable senator. The fact remains that some parliamentarians do not understand the importance of Canada-U.S. relations. I call that the new parliamentary diplomacy.

Senator Grafstein has helped to this end with his good debate today. There will be another, more stimulating debate, but I would hope that the honourable senator will stop talking about his intentions to attack the House of Commons because this house is more reasonable. I respect the other side as much as I respect this side. They are entitled to their opinions; they are entitled to be outrageous, if need be; and they are entitled to have comments on the policies of the United States of America without being labelled as anti-American. I do not know of one senator here who is anti-American. However, I know many senators, on both sides of this house, who do not agree with the honourable senator, even though you, sir, have written in some Canadian newspapers that you blame the people of your faith, but it was your privilege to support the war in Iraq when the majority of Canadians totally disagreed with the position taken by the United States. The fact that we disagreed with the policies of the United States does not mean we are anti-American.

• (1640)

The way in which the honourable senator approaches debate is very important. Make us believe that if we talk too much, we will be perceived as anti-American. The honourable senator has given us notice that all our words will be put on the record of the Congress of the United States of America.

I am glad that I have been given that chance. They will know my name very well there. An ex-secretary of cabinet was my best friend. Ed Derwinski was the most active man in the IPU. He will see that I am still alive and kicking and a friend of the citizens of the United States of America. However, I disagree with some of their policies.

**Senator Grafstein:** Honourable senators, I again find myself almost in violent agreement with my colleague. I did not in any way, shape or form suggest that we should not disagree. I have said it a number of times. We should agree to disagree. Let us do it in a civil and proper manner.

If the honourable senator took from my words any implication that I was trying to stifle debate by suggesting that the record of the Senate Hansard should be printed in the congressional records of the United States, he takes my comments out of context.

Once debate is public record, the idea is to ensure that the Americans get a view that is balanced. I am not looking for a unilateral view here. I am not a unilateralist in that sense.

I welcome the debate, and I welcome the honourable senator's intention to participate in this debate and that his comments will be recorded in the *Debates of the Senate*. I would hope that he would have no objection, but I am free to do it with or without his objection —

**Senator Prud'homme:** The honourable senator always does it any way.

**Senator Grafstein:** — to send the record of the debate to Americans who are interested in what we have to say here.



Honourable senators, I would think that the honourable senator would be proud to have clearly outlined his views so that they could be known to the American Congress. There is no problem with that. I am not ashamed of anything that I have said in the Senate, in the United States before the Congress or in Europe at any time.

I would like the honourable senator to draw my attention to the words that in any way, shape or form would suggest that I am speaking against Canada's independence or Canada's rights in this world. Quite the contrary; I am proud to be a Canadian.

I have always supported Canadian policies, but when I disagree with Canadian policies, I try to do it in a way that even he would understand in order that there is no misunderstanding. My opinion is not veiled. It is open, direct, and precise.

I welcome the honourable senator on those terms to participate in this debate. If one were to say to me, "We are afraid to have the *Debates of the Senate* listed in the Congressional Record," I could not see other senators agreeing with that. We should be proud to have our words in the Congressional Record of the United States so they do not take our words out of context as they do through the media.

Those diatribes from members of our caucus that were taken out of context in the United States did not represent our view. They did not represent the views of senators. Let's put it in the proper context. The proper context is a debate in the Senate — both sides, all sides, good and bad.

Let us debate it. Let us provide a framework so Canadians can understand that there is a thoughtful discussion on both sides. I do not believe the debate on Canada-United States relations has been balanced. We hear the bad things. We do not hear the good things. That is one of the fundamental issues that I would like to examine here. We should be proud to put ourselves on record and let the Americans know where we stand. Why not?

This is a free country, just as the United States is, and they respect that. I welcome the senator's participation. I welcome his questions. I will listen very carefully, as he listens to me. If I disagree with him, believe me, I will let him know.

**Senator Prud'homme:** Honourable senators, I have a supplementary. It will be just a quick question.

The honourable senator said that this bill is very important. Could he imagine the reaction of the government and citizens of United States of America — the good folk whose company we enjoy — if the bill proposed were put to a vote and defeated? Would it not defeat the purpose of the honourable senator's attempt at a rapprochement?

On the topic of sending our debate to Congress, I have known the honourable senator for too long and too well. I know every word that he says in this chamber is sent around the world, including His Holiness, the Pope. I have good contacts in the

Vatican. Every word of Senator Grafstein is of such importance that he spreads them all around the world. I congratulate him that he is so well organized. I am not.

However, I am afraid of the reaction if people happen to disagree with him. People do not go into detail when they read the congressional record.

There is the question, are you with me, or are you against me? Did we not hear recently on television that those who are not with us, are against us? I am a little bit more sophisticated than that. Senator Grafstein is a little bit more sophisticated than I am.

We are a chamber of sophisticated people to various degrees. We are afraid of the reaction to such a bill if it were not agreeable to the majority of the people, for all kinds of different reasons. I try to be positive. I will participate in a positive way, having calmed down a little bit.

**Senator Grafstein:** Again, I thank the honourable senator for his comments. I think they are cogent and useful.

He intimated earlier that somehow I would prejudge this bill by talking about it before I introduced it. He is predicting the will of the Senate. Let us have the debate, and then let us decide.

I am not afraid if this bill is delayed, as my resolution was last year. I am not afraid if it is turned down. I do not believe it will be. I believe that I will be able to convince most senators that this is a very useful bill for Canadians as well as Americans. Let us not prejudge the debate.

Yes, I do feel that I have a relationship with the Pope because my father and his father served in the same brigade in the Polish army in 1920.

**Hon. Willie Adams:** Honourable senators, I have a question for Senator Grafstein. My knowledge of history is not as good. I have watched many cowboy movies about when Americans first went West and fought the natives. Americans, just like Canadians, are all immigrants. They took over some of the native country. Buffalo Bill killed all the buffaloes, which was food for the natives.

How can we support this bill? I think of the history, especially what the Americans did to the native people.

The President did not make a planned trip to Canada because we did not join him in the war on Iraq. We are good friends.

I was very young at the time of the Second World War. I learned my language and English. There were not many people in the North who spoke English.

It is the same thing with Canada. The Americans do not know all the history either, especially in regard to other countries. I would not accept supporting the bill.

**Senator Grafstein:** Honourable senators, the Aboriginal community in Canada has much to learn from the Aboriginal community in the United States. I had an opportunity to examine this question when I participated in the Nisga'a debate on the Nisga'a Treaty.

Senators will recall that I was not in favour of that bill because of the questions of sovereignty. I thought I gave a reasoned position on why I disagreed with our Aboriginal colleagues on the Nisga'a.

The Americans have dealt with this issue in a very useful and interesting way. It strikes me that sometimes we can learn useful messages and ideas from the Americans who have come to grips in a different way with the same endemic problems of the unfair treatment of Aboriginals in Canada. There are things that we can learn from the United States.

• (1650)

The other issue that I learned from the United States is they are ahead of us on the treatment of water on reservations — way ahead. Senator Watts is nodding his head in agreement. They provide clean water to all their reservations. We in Canada do not. We can learn from the Americans there as well.

There are things we can learn in this debate from the Americans that will be useful for us; and by the way, I think there are a lot of lessons we can teach the Americans as well. There is no question about that. Again, I welcome the honourable senator's comments. I hope he will make a fuller speech so I can address it more fully at the end of debate.

**The Hon. the Speaker:** Senator Grafstein, you wanted to move the adjournment, I think. Did you have another question, Senator Cools?

**Senator Cools:** I was willing to move the adjournment. Perhaps someone else was planning to do that.

**The Hon. the Speaker:** Senator Grafstein asked to move the adjournment himself. Did you want to do that, Senator Grafstein?

**Senator Grafstein:** Forgive me, Senator Cools. I thought it would be appropriate to hear from the side opposite, and Senator Eyton has indicated his interest in participating. I hope there will be ample room for all senators to participate.

On motion of Senator Grafstein, for Senator Eyton, debate adjourned.

Hon. Willie Adams:

[Translation]

## CRIMINAL CODE

### BILL TO AMEND—SECOND READING— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Lapointe, seconded by the Honourable Senator Gauthier, for the second reading of Bill S-18, An Act to amend the Criminal Code (lottery schemes).—(*Honourable Senator LaPierre*).

**Hon. Laurier L. LaPierre:** Honourable senators, I rise in support of the Honourable Jean Lapointe, who introduced Bill S-18.

[English]

Sir, I am told that I have 45 minutes. I have decided that I am too excitable, and consequently I must take less time than 45 minutes. Hence, I will attempt to keep myself to the normal limit.

As honourable senators know, the purpose of the law is to remove what we used to call slot machines — and which now have astonishing names like “un dispositif électronique de visualization” or “un appareil à sous.” The sponsor of the bill wants slot machines to be removed from places that are easily visible and accessible to where they really belong, which is in casinos and at racetracks, if my memory serves me right.

[Translation]

By introducing this bill, Senator Lapointe has suggested that one of the major problems was accessibility. The second problem was visibility.

[English]

Consequently, these are the questions that we need to look at. Before we do that, let me repeat that this proposed legislation is not meant to ban video lottery terminals, VLTs. Its aim is to place them where they belong, in casinos and racetracks. That is where they belong.

Instead, with the exception of Ontario, British Columbia, and the three territories — Nunavut, the Northwest Territories and the Yukon — we now these machines in everyday accessible places, such as restaurants and bars, which are easily accessible and visible over and over again. I have no doubt that, in less than a decade, these machines will be found them in drug stores, in depanneurs, in public washrooms, practically everywhere a citizen goes. Is this where we want them to be?

It would appear that Canadian public opinion is very much opposed to this. I must tell honourable senators that the senator has gone through an astonishing amount of research — and I want to congratulate him and his staff. When they asked me if I would do this, they gave me an astonishing amount of documentation — it took me t has taken three vanloads to carry them home — which I have read and which I keep losing. In fact, some of it had to be sent back from India, where I was in July and where I had them with me. So there you are.



*[Translation]*

Approximately 70 per cent of Canadians believe that video lottery terminals should be available only in casinos or at racetracks.

*[English]*

That is a very important statistic.

Furthermore, as far as public opinion is concerned, 64 per cent of the population believes that this kind of playful activity is not harmless at all — or even playful. Sixty-four per cent of our population holds it self-evident that this kind of activity engenders criminal activity.

Nor, honourable senators, as the honourable senator has so well pointed out, is it possible for us to close our eyes to the dangers that the widespread use of these terminals is causing to the health and welfare of Canadians.

*[Translation]*

Consider the following figures. Here is the amount of money lost per capita in each province: in Quebec, \$147; in New Brunswick, \$174; in Nova Scotia, \$179; in Prince Edward Island, \$124; in Newfoundland and Labrador, \$200; in Alberta, \$287; in Saskatchewan, \$254; and in Manitoba, \$220. You can imagine the repercussions.

*[English]*

They demonstrate that families, parents, children and individuals, and the overall national productivity are seriously affected by the economic fallout of the general placement of terminals where they are easily accessible to practically everybody, and so easily visible.

Frightening as the above is, the results of this inordinate placement of terminals leads to the growing number of addicts or problem gamblers. Allow me to quote some of the experts Senator Lapointe consulted on this problem with regard to our health and welfare, and above all the health and welfare of those who are affected by this disease.

First, the Canadian Public Health Association says that research has shown that the spouses of problem gamblers report higher than normal suicide attempts, nervous breakdowns and substance abuse, and that the children of problem gamblers have behavioural or adjustment problems related to school, drug or alcohol abuse, running away and arrest.

The Alberta Alcohol and Drug Abuse Commission says that the amount of money spent on VLTs has increased exponentially since their introduction into Canada. One study of VLT problems — gambling clients — found that although almost all of VLT clients studied indicated that they had gambled at some point of their lives, most reported that they had experienced no problems until they began to play VLT machines.

Dr. Smith and his colleagues have said that fast-paced, continuous gambling formats such as VLTs and slot machines are most closely associated with problem gambling. Therefore, by extension, the crimes commonly associated with problem

gambling — fraud, domestic violence, theft and suicide — are linked to the gambling format with the highest addictive potency.

I could go on, giving honourable senators more and more of these statistics. However, let me only quote one of the researchers in Ontario, which, of course, has none of these machines. Dr. Rose, the director of the Iona College Gambling Institute of Windsor, Ontario, said that, as with any addictive substance or behaviour, availability is an important factor and that, as such, if VLTs are available in the nearest bar, their very geographical proximity can intensify their threat to reasonable, responsible usage.

Another great reason for restricting VLTs from bars has to do with self-exclusion. Allowing problem gamblers to inform those who regulate access to gambling venues of personal self-exclusion has merits. When it comes to VLTs in bars, however, they would not likely be someone to enforce compliance.

• (1700)

I could go on and on, honourable senators, giving statistics and quotes that would demonstrate what Senator Lapointe attempted to show in his remarks.

Honourable senators might ask what the provinces do to assist Canadians who are so afflicted. I have the statistics. Let me tell you what the provinces earn from these VLTs. The revenue in the province of Quebec is \$692 million. The revenue in New Brunswick is \$55 million. In Nova Scotia, it is \$112 million. In Prince Edward Island, it is \$8 million. In Newfoundland and Labrador, it is \$67 million. In Alberta, it is \$525 million. In Manitoba, it is \$137 million. In Saskatchewan, it is \$157 million.

I asked myself what the provinces do with all that money. They spend only a pittance on alleviating this problem. If I remember correctly, all the provinces together spend 28 per cent of the total revenue to assist those who have become dependent on gambling, after having earned hundreds of millions of dollars.

Honourable senators, this is a serious problem that we must study carefully in order to make a contribution to the health and welfare of our young people in particular.

Please understand that this bill is not about prohibition; it is about limiting access to a phenomenon that has already destroyed the lives of many people in our country. It is not only the addicted who suffer from an addiction. Their families suffer, and I could tell stories about that. Their communities suffer. Ultimately, all of society loses. The costs of these losses need to be weighed against the revenue derived from VLTs. We need to take some responsibility for this situation. Our citizens should not be expendable in the name of easy revenue for the government.

In conclusion, I would like to thank Senator Lapointe for having studied and raised this issue, and for having come to the conclusion that it is an important social problem with which we must deal.

On motion of Senator Stratton, debate adjourned.

## CRIMINAL CODE

BILL TO AMEND—SECOND READING—  
DEBATE ADJOURNED

**Hon. Serge Joyal** moved the second reading of Bill C-250, to amend the Criminal Code (hate propaganda).—(*Honourable Senator Joyal, P.C.*).

He said: Honourable senators, this bill, which comes from the other place, is the result of tireless effort by the Member of Parliament for Burnaby—Douglas. It is a very important and serious bill because its goal is to amend the Criminal Code of Canada. It is also an important bill because it addresses one of the fundamental constitutional roles of the Senate, the protection of minority rights.

The Senate of Canada is one of the key public institutions in Canada that promotes and stands for minority rights. As Lord Sankey of the Judicial Committee of the Privy Council stated in the famous *Aeronautics Regulation* case of 1932:

...it is important to keep in mind that the preservation of the rights of minorities was a condition on which such minorities entered into the federation, and the foundation upon which the whole structure was subsequently erected.

I repeat, the Senate was created precisely to protect the rights of minorities in Canada. The House of Commons exists to protect the rights of the majority; it falls to us in this chamber to protect minorities. As one of the 24 divisional senators in Quebec, I must stand for the minority rights of the group of people I was summoned to represent in this chamber, and I must promote their views in the legislative process. That is essentially our duty.

The Senate has had a commendable record in the past in advancing human rights. Professor Franks from Queen's University was a contributor to the book that Senator Murray and myself put together, the launching of which many of you honoured me by attending in May. Professor Franks wrote at length about the special efforts on the part of senators in the early 1990s with regard to advancing human rights. At pages 174-75 of *Protecting Canadian Democracy: The Senate You Never Knew*, Professor Franks said:

The federal legal provisions regarding discrimination on the basis of sexual orientation only exist because of six years of persistent effort on the part of the Senate. After the Ontario Court of Appeal ruled in *Haig v. Birch* that sexual orientation be read into the Canadian Human Rights Act, Senator Kinsella, a Conservative who disagreed with his own government's views that this sort of legislation was unnecessary, introduced Bill S-15 into the Senate in order to insert sexual orientation as grounds into the Act.

Some of our colleagues were participants in that debate in 1992. That bill was adopted in this chamber but, because of prorogation in 1992-93, the bill died on the Order Paper.

Senator Kinsella reintroduced the bill in the next Parliament, in 1995, as Bill S-2, which was passed by the Senate and sent to the House of Commons. In the House of Commons, that bill prompted the then Minister of Justice to introduce a bill to the same effect in order to give weight to the protection that Senator Kinsella tried to achieve.

I will quote Senator Kinsella from the *Debates of the Senate* of 1992. He said:

Not only does this Chamber serve as an important check on the exercise of state power, but the Senate can play a very special role in the protection of parts of Canada or groups of Canadians, which and who by themselves will never constitute a majority. This role of protecting the minority is especially important where a given minority group of Canadians might be perceived by the majority as a despised minority group.

• (1710)

We had a debate earlier on this afternoon on Aboriginal issues. I refer here to the position of Senator Kinsella. The Aboriginal people in our country will never constitute a majority. Gays will never constitute a majority. There are other groups that will never constitute a majority. However, it is our role in this chamber to stand for the rights of those minorities. Senator Kinsella was totally accurate in his comments in those days, in 1992, more than 11 years ago now, about our role as senators.

It is important to keep that role in mind, honourable senators, when we address Bill C-250 because it deals essentially with gay communities and their status in the Canadian society. This is not an easy issue because it is easy to caricature. It is easy to caricature because the media, television, film, literature, always likes to stereotype this minority with unflattering caricatures. Why? Because it is easy to just set aside the issues of a minority when we can laugh at them. If they are laughable, they are no longer to be taken seriously, and if we do not have to take them seriously, we do not have to deal with their concerns. That is essentially our common reaction or public reaction in many instances in regard to the status of the gay communities.

Bill C-250 amends subsection 318(4) of the Criminal Code. Section 318 of the Criminal Code is entitled "Hate Propaganda." Its purpose is to repress hate propaganda against identifiable groups in Canada. Why was that section put into the code?

In researching that question, I found that in 1965 a group of Canadian scholars was asked by the then Minister of Justice to study a phenomenon of those days — hate propaganda against Blacks and Jews. At the time, groups promoting hate against Blacks and Jews were multiplying. The report that I have in my hands was put together under the chairmanship of Maxwell Cohen who was then Dean of the Faculty of Law at McGill University. He was an expert who appeared often before the justice committees of both Houses to testify on human rights issues.



Our colleague Senator Prud'homme will remember that. I myself remember Mr. Cohen from when I co-chaired the joint committee on the Constitution. Our current Clerk of the Senate was clerk of the committee at that time and, on behalf of the Senate, we had Mr. Cohen appear as an expert witness on human rights issues under the Charter.

In that group with Mr. Cohen, there were seven scholars. Among them were former Supreme Court Justice Peter Cory; Mr. Mark MacGuigan, who was Secretary of State for External Affairs and a judge of the Federal Court of Canada, and who has unfortunately passed away; and the last one on the list was — guess who — Pierre Elliott Trudeau. I was surprised, in fact, to look into that report from 1965 and find the name of Mr. Trudeau.

What did that report say about hate in Canadian society? I want to quote from it because I think this is important to keep in mind when we address Bill C-250. The report states: "Canadians who are members of any identifiable group are entitled to carry on their lives as Canadians without being victimized by the deliberate, vicious promotion of hatred against them. In a democratic society, freedom of speech does not mean the right to vilify."

That was the major conclusion of the report that led to the enactment of section 318 of the Criminal Code in 1970, five years after the report was written. We will remember that by 1970, the Prime Minister was the Right Honourable Pierre Elliott Trudeau. Under his leadership, the Criminal Code was amended to prevent hate propaganda.

Honourable senators will remember very well that Mr. Trudeau, as Minister of Justice, Attorney General of Canada, became famous in the Canadian public in 1967 for his remarks in defence of an amendment to the Criminal Code. That is now section 159. We all remember the famous phrase that is now part of our political history: "We have to take the state out of the bedrooms of the nation."

Mr. Trudeau was very preoccupied as a scholar, as a minister and as a prime minister, to make sure that Canadians should not be victimized because of their innate characteristics and that Canada should prevent that victimization.

That is where sections 318 and 319 of our Criminal Code came from. These provisions establish three specific offences. I will not read the legal text; I prefer to put it in layman's terms. The first offence is the advocacy or the promotion of genocide. I think everyone will understand that. The second offence is the incitement of hatred against an identifiable group. The third offence is the wilful promotion of hatred against any identifiable group.

Who are the groups identified in section 318? There are four groups, identifiable by colour, race, religion or ethnic origin. In other words, the Criminal Code has very clearly established that hate propaganda must be essentially to bring physical harm to someone. It is not defined as the promotion of hate generally; but

the promotion of hate with the objective of bringing physical harm to someone and to kill the person, including the murder of groups of people. That is genocide. We are talking about killing when we talk about genocide. We are talking about physical harm.

In other words, if someone hates Blacks and decides to get a group together on a Saturday night, and incites them to go into the streets and attack any Blacks they find and maybe even kill them, that is what we mean by advocating genocide. That is essentially what is prohibited under section 318. Section 318 also protects such identifiable groups as Jews and Aboriginal people.

This is a very important section of the Criminal Code because hatred is a feeling that leads to the diminution of value. When you promote hatred against people, you deny their value as human beings, you rob their respect and dignity in our society. It was seen in 1970 as fundamental to the well-being of Canadian society to establish this minimal respect among individuals.

What does this bill try to do? It does not change the three offences that I have just described in sections 318 and 319. Bill C-250 adds sexual orientation as a basis of determining an "identifiable group." In other words — and I will say it in French because the slang word in French is very descriptive and my colleagues who are fluent in French will understand it easily.

[Translation]

One Friday night, a group of people, egged on by one of them, decided to go fag-bashing, or "casser de la tapette," in French.

[English]

Honourable senators will remember that is exactly the term used among White supremacists. Even Mr. Trudeau was accused of being "tapette." In 1970, when the FLQ manifesto was read on national TV, and I am going by my memory here, Mr. Trudeau was described in the following way:

[Translation]

And we are going to get rid of Trudeau the fag and his whole gang.

[English]

In other words, they tried to vilify Mr. Trudeau on the basis of his alleged sexual orientation.

• (1720)

In 1970, going back in history, to accuse someone of being "une tapette" was the most effective way to absolutely undermine the credibility and the leadership of that person. As I described earlier, one could separate an individual from society and trample him or her, and no one would care.

Hatred of gays and lesbians has profound and devastating consequences: We all know what kids in schoolyards and playgrounds do when they want to gang up on one of their group. The most efficient and effective attack is to call someone a fag, "la tapette." That immediately destroys the capacity of that young person to be one of the group, to be seen as an equal member of society.

This bill is important because it adds to the identifiable groups those that can be identified on the basis of sexual orientation.

What did we do in terms of protecting Canadians on the basis of their sexual orientation? Senator Kinsella took two specific initiatives, private member bills. He even went against his own government at that time in his attempts to make sure that our Human Rights Act protected sexual orientation. In 1996, the Canadian Human Rights Act was amended to include sexual orientation as a non-discrimination ground protected in the act.

What did the government do in 1995-96? The government amended the Criminal Code again, in 1996, to include the current sentencing provisions at Part XXIII. Section 718.2 of the Criminal Code addresses what we call aggravating circumstances in the definition of a sentence. When an individual is sentenced after being found guilty, the judge takes into account a certain number of factors, including the presence of aggravating circumstances. Section 718.2 provides that evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor is deemed to be an aggravating circumstance.

In other words, in sentencing a convicted offender, our courts consider whether there is evidence that the offence was motivated on the basis of sexual orientation. That provision already exists in the Criminal Code, as a result of the amendment of 1995 that I referred to earlier.

So are we just making a mountain out of a molehill, or is there a real problem here that we have to address as parliamentarians? I should like to quote statistics from the Department of Justice in answer to that question. The hate crime statistics I am quoting are from police records for 1997, the most recent national records available.

For that year, 279 race-based hate crimes were reported. Sexual orientation comes in at second place, with 108 hate crimes committed against people simply because they were gay or lesbian. For the same year, there were 91 hate crimes committed on the basis of religion, 21 on nationality and 53 on the basis of ethnicity. My colleagues may be interested to know that there were 58 crimes based on gender. The list goes on to include disability, language, et cetera. In other words, 18.4 per cent of the hate-motivated crimes were on the basis of sexual orientation.

In the Vancouver area, recent statistics from the Chief of Police of Vancouver show that 62 per cent of robberies and assaults committed against identifiable groups in the Vancouver area are motivated on the basis of sexual orientation. Honourable senators, that is surprising and disturbing, especially given the reputation of Vancouver as being an open and welcoming community that seems to integrate a large segment of Canadian diversity, yet it is the place that has the highest level of these violent assaults motivated on the basis of sexual orientation.

**Senator Oliver:** What about cities like Toronto and Montreal?

**Senator Joyal:** I have other statistics I should like to give to you. In Toronto, based on the report I have here from the Toronto police, there have been 211 hate crimes against gays or lesbians over the past 10 years. Honourable senators, this type of crime is widespread. The problem is not limited to Vancouver. It is present here in Ottawa. It exists everywhere. It is not a local phenomenon; it exists throughout Canada.

It is important to make sure that our Criminal Code is consistent with the Canadian Human Rights Act, as amended through the initiative of Senator Kinsella, as well as with the Criminal Code itself. The code's provisions on sentencing, as I have said, include sexual orientation as an identifiable characteristic, as does our Constitution, since the *Egan* case in 1995. Section 15 of the Canadian Charter of Rights and Freedoms, which is the equality rights section, was interpreted by the Supreme Court of Canada *Egan v. Canada* as including sexual orientation as an analogous ground on which claims for discrimination could be based.

In other words, in our two fundamental federal human rights laws, the Canadian Human Rights Act, the Charter, and in the key section of the Criminal Code on sentencing, sexual orientation is recognized as an identifiable characteristic. This bill simply makes subsection 318(4) of the Criminal Code consistent with those laws by adding sexual orientation in the definition of identifiable group.

This bill also has another important element, which is the protection of religious texts. It was mentioned during debate in the other place that some religious texts might be threatened because they condemn homosexuality. Many were concerned that the Bible and other religious texts that contain such passages would be affected by this bill.

Bill C-250 was amended in the other place to include protection of religious opinions based on a belief in a religious text, at paragraph 319(3)(b).

In other words, although religious expression is already protected in the Criminal Code, Bill C-250 adds further protection. The Criminal Code would be amended through this bill to protect the good faith belief on an opinion based on a religious text. Whatever a religious text may contain on the issue of sexual relationships between persons of the same sex, and the interpretation thereof, it would be protected under Bill C-250.



Honourable senators, this bill is very important to me. As I mentioned earlier, Bill C-250 simply makes this provision of our Criminal Code consistent with our Human Rights Act, and reconciles the discrepancy in the definition of identifiable group in the sentencing and hate propaganda provisions so that we have a streamlined approach on the prohibition of discrimination based on sexual orientation.

You may ask me, who is supporting this initiative? Who is supporting C-250?

• (1730)

I would like to quote from an article on the annual meeting of the provincial and federal Ministers of Justice in November of 2001. It refers to Minister McLellan, the then Minister of Justice. It states:

McLellan met with the provincial justice ministers yesterday. She said there was "unanimous consent" to make good on an earlier promise to designate verbal attacks on "sexual orientation" as hate propaganda.

In November of 2001, all 10 provincial Attorney Generals, along with the Attorney General of Canada, agreed that hate propaganda on the basis of sexual orientation should be included at section 318 of the Criminal Code.

There is more. The Canadian Association of Chiefs of Police adopted a resolution last August that states:

Be it resolved that the CACP urges the Government of Canada through the Minister of Justice and Attorney General to amend the Criminal Code of Canada to add sexual orientation to the list of identifiable groupings in subsection 318(4).

In other words, the Canadian Association of Chiefs of Police, who have the responsibility to implement the Criminal Code, recognized the statistical reality that hate crimes against gays and lesbians are a problem in Canada and that it is time to act now.

There is more. The Canadian Bar Association, in a letter of May 2003, addressed to the Honourable Andy Scott, who was then the Chairman of the House of Commons Justice and Human Rights Committee, demanded that Bill C-250 be adopted as they had requested previously on many occasions.

Honourable senators, there is in the police community, the legal community and among governments across Canada a consensus that sexual orientation should be included as a ground of discrimination in the hate propaganda provisions of our Criminal Code.

I hope that we can refer this bill to our Standing Senate Committee on Legal and Constitutional Affairs where members would have an opportunity to examine this issue at greater length. I have attempted to put the issue squarely before you this afternoon, rather than to exhaust the legal minutia of the Criminal Code, which as honourable senators know, when you start reading it you need a magnifying glass because two thirds of the text is in insurance policy-sized font.

It is important for us to remember that ignorance is the foundation of hate. As Parisa Baharian said, "In our society, silence in stamping it out is the spark by which hate spreads."

We, as senators and as chamber in the Canadian Parliament, can do a useful job for Canadians and for minorities. Think about minorities — those who will never be the majority and those who will never be able to be elected in a sufficient number to have their views aired and accepted. They rely on the majority, as much as francophones rely on the majority of anglophones and as much as our Aboriginal people rely on us to listen to them.

This is not an easy issue. I am the first one to recognize it. In our souls and conscience, we have to act fairly on this issue. We have to act with balance; but we have to act because this is a problem that must be addressed. The way it is addressed in Bill C-250, with the support of the present Minister of Justice, is worthy of our support.

**Hon. Anne C. Cools:** Honourable senators, I have some questions. I will tackle them one at a time.

I thank the Honourable Senator Joyal for his words. He has said and it is well known that the Minister of Justice supported this bill. In actual fact, this bill made its way through the House of Commons on the strength of the support of the Minister of Justice.

It is a well-established principle that ministers of the Crown should not interfere in private members' business. If in actual fact that there is a private member's bill that the Minister of Justice feels so strongly that he or she should support or that it should pass, the minister should adopt the bill and bring it forth to the chamber under the rubric of ministerial responsibility.

To the extent that this bill was supported somewhat furtively by the Minister of Justice, what impact does that have on this bill? Is this bill still a private member's bill, is it government bill, or is it a new hybrid bill?

**Senator Joyal:** Honourable senators, this bill comes to us from the House of Commons, so we address it as any bill coming from the House of Commons. It is a bill that is the result of an initiative, as I mentioned, by the Honourable Member of Parliament for Burnaby—Douglas over the past 15 years to make this amendment to the Criminal Code.

There is no doubt that the Minister of Justice supports the bill. As I mentioned, very early last spring, there was consensus among the police and the provincial Attorneys General to seek this amendment to section 318 of the Criminal Code.

As it is a private member's bill, the honourable senator will know that normally, as is the procedure in the other place, each member is free to vote the way they want. The Minister of Justice mentioned that he would support this bill because it contains the same language as the consensus agreed to by the previous Minister of Justice, Anne McLellan.

I do not think we should call it a hybrid bill. It is a private member's bill that comes from the other place with the large support of members, and it happens that the Minister of Justice supports this bill.

**Senator Cools:** Honourable senators, I am aware of the history. I have followed the matter with considerable interest. I am saying to the honourable senator that perhaps we can examine in committee that there is no such thing as a matter that a minister individually supports. As soon as minister supports a question, it means the government is involved and supports it because, after all, the principle is the unity of cabinet. Cabinet can only speak with one voice, but we can debate that another time.

My second question has to do with the actual amendment to the Criminal Code that is before us. The honourable senator used the term "hate propaganda" often. That is the name of the bill. The amendment is actually an amendment to section 318, which is referred to as the section on hate propaganda.

I do not think that I heard Senator Joyal explain the word "genocide." Perhaps he could expound on that a little bit.

**Senator Oliver:** He did mention it.

**Senator Cools:** I did not hear him. I am asking him to expand. If he does not want to expand, I can accept that.

Section 318 of the Criminal Code is the section that lays out the crime of genocide and the penalties for genocide.

This bill would not only add the term "sexual orientation" to the Criminal Code as an identifiable group, which includes colour, race, religion and ethnic origin, but in actual fact it also creates a new crime of genocide against homosexual people. Would the honourable senator comment?

I would also like for the honourable senator to comment on another point. Historically, the term "genocide" was born around the Nuremberg trials.

• (1740)

The preoccupation with the notion of genocide and the protection from genocide had to do with bad relationships between the peoples of the earth. Genocide is derived from the word "gens," from anthropology, meaning "peoples" or "race." For example, if you look at me, it is clear that my gens is African. I am Black and a member of the African races, gens. The suffix "-cide" means "killing." Thus "genocide" is the killing of a race or the killing of people connected by gens.

I am trying to understand what evidence or what grounds Mr. Robinson or anyone else relied on to assert that persons who are homosexuals are members of a gens. In other words, what scientific evidence was relied on to treat homosexual individuals as a people?

**Senator Joyal:** I would refer the Honourable Senator Cools to section 318, subsections (1) and (2) that define the word "genocide." The word "genocide" used in this section has a specific definition:

318.(2) In this section, "genocide" means any of the following acts committed with intent to destroy in whole or in part any identifiable group, namely,

(a) killing members of the group; or

(b) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction.

It is clear that in the code the definition of "genocide" may not be exactly the same as the definition that is generally known in other international conventions. That is the first point.

Concerning the honourable senator's second question about the word "gene" in the word "genocide," the identifiable groups in the existing section 318 are based on colour, race and religion. Religion, as the honourable senator is aware, knows no colour. The identifiable group of religion, per se, does not contain the "gene" aspect by the very nature of religion that spans all persons regardless of colour. I do not think that genocide, in the context of gene only, is completely in accord with the traditional definition of genocide. When we use the word "genocide," we are usually referring to a well-identified cultural group or nationality, as the honourable senator mentioned in reference to the trials at Nuremberg. We knew exactly what the genocide referred to, just as we knew in the trials at Kosovo and at Rwanda. For instance, when we talk about genocide in political contexts, we know that it is about a specific group of culturally identifiable people. In terms of religion, of course, we have another example where genocide is used as a concept but cannot be absolutely parallel with genocide used in a political context.

**Senator Cools:** The honourable senator misunderstood because I did not say "genes" but rather "gens," which is an old anthropological term.

Those sections that govern genocide are not intended to include two people who have a quarrel and one kills the other. I was on the parole board, so I have read many cases. Those sections are intended to speak to hate propaganda — attacks to destroy and to eliminate, in a very profound way, peoples who are described as peoples and not people who have certain sexual proclivities. Those sections speak to "peoples" in the sense of nationality, ethnicity and religion.

It is only recently that religion is not connected to race. The Hebrew race was a race and a religion and the Arabs comprise races and religions. I do not think that is a particularly good example because most religions grew up around tribal behaviour, if one wants to say it that way.

Honourable senators, the term "gens" developed over centuries from tribes, clans or groups of people who are usually connected by a kind of racial or ethnic origin. I am concerned that homosexual persons are being redefined now as a nationality or as a people.



I am aware that Senator Joyal is well acquainted with the law because he has spent a great deal of time studying it. I do wonder why this matter is being drafted in this way. Homosexual persons are many things, but they are not a people.

What are people then? This has been a big debate in Canada. Are the Québécois a people? I could go on to discuss the concept of a distinct society. When are a people a people? Then I could take the debate on a bit. When are a people an identifiable group? Then you would have to show me the identifiable characteristics that determine they are an identifiable group. These are features of peoples. We are doing homosexual persons a great disservice in using such a wide, sweeping brush.

Could Senator Joyal comment on that further? I understand his concerns because of his great love of the law and justice. However, why are we proceeding in this way? I am certain that Senator Joyal is aware that much protection is provided in sections 22 and 810 of the Criminal Code in respect of inciting or counselling violence against any person. When we determine by law that a specific group, activity, predisposition, et cetera, are peoples, we will step beyond the scope of the Criminal Code into the area of anthropology.

**Senator Joyal:** Senator Cools is raising points that we could certainly review at committee. We might hear expert testimony on those points.

I read the Criminal Code as it exists and its definitions of "genocide" and "identifiable groups." Of course, section 718.2 of the code in the sentencing provisions specifically refers to hate based on a person's sexual orientation as an aggravating circumstance when a judge has to sentence an individual. In other words, it is an important element to maintain. Coherence in the approach of the code is in order if we are to respect the logic of the code. We will certainly have an opportunity in committee to hear expert testimony on this issue. We will be able to conduct a thorough review of this point with members of the committee and other honourable senators who wish to attend.

**The Hon. the Speaker:** Honourable senators, I regret to advise that Senator Joyal's 45 minutes have expired.

**Senator Cools:** Let us give him time.

**The Hon. the Speaker:** Only Senator Joyal can ask for additional time and all senators must agree. He is not rising.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** I am rising to participate in the debate, honourable senators, and in doing so, I wish to canvass a number of basic points of principle given that second reading debate is on the principle of the bill.

My first reflection is that the emergence and development of criminal law is, in many ways, the development or the story of a passage from the barbarism of its early history through to a developed understanding and assertion of basic human rights and fundamental social justice.

• (1750)

Honourable senators, the Universal Declaration of Human Rights and our domestic Canadian Charter of Rights and Freedoms, as well as John Diefenbaker's Canadian Bill of Rights, testify to the great advances made across Canada in this journey for freedom.

My second reflection flows from the basic assertion that human rights, such as the right to life and the security of the person, have their genesis, not only in the enactment of legal instruments, but also as the results, sometimes, of the misadministration of criminal justice systems across time and across societies. This consideration applies directly, in my opinion, to the affirmation of the right of all persons to equality of protection by the criminal law.

Bill C-250 seeks to amend, as has been explained by the Honourable Senator Joyal, the Criminal Code of Canada with regard to hate propaganda so as to provide explicit protection to everyone from those who advocate or promote genocide or those who incite hatred on the basis of sexual orientation.

Senator Joyal has explained to us the provisions of sections 318 and 319 of the Criminal Code that currently provide the advocacy or promotion of genocide, the proscription against the incitement of hatred against any identifiable group — that is the key to this bill — and the wilful promotion of hatred against any identifiable group.

Let us turn our attention, honourable senators, to identifiable group. This is what the bill is about. We find identifiable group, as Senator Joyal has explained to us, currently defined by the code as "any section of the public distinguished by colour, race, religion or ethnic origin."

Honourable senators, before us is the task of turning immediately to the issue that is sometimes described as applying the *ad justum generis* principle. By adopting Bill C-250, we would be appropriately applying the *ad justum generis* generous principle to the list of distinguishing grounds listed in the current definition of identifiable group.

This is also referred to as adding an analogous ground to a list of proscribed identifiers. The Senate of Canada, as has been indicated, has shown leadership in this regard in past.

Our attention was drawn, honourable senators, to the work of this house of the Canadian Parliament that first adopted the bill adding sexual orientation to the list of prohibited grounds in the Canadian Human Rights Act. I just wish to ensure that the record is clear that successive governments of Canada of different political stripe have struggled in their caucuses to deal with adding sexual orientation as a prohibited ground of discrimination in the Human Rights Act. It is not surprising that it was difficult, whether in the Liberal government or within the Progressive Conservative government, to achieve the kind of consensus that is necessary to bring in that kind of legislation.

There was great debate, and it took a long time, which is why I wish to underscore the point that Senator Joyal has raised, namely, that this house of our bicameral system has been working rather successfully, honourable senators, for 136 years. It does place on our shoulders that special responsibility to deal with issues affecting identifiable groups, to use the language of the Criminal Code.

The history speaks well of this chamber. We have not shirked traditionally in ensuring that minority groups that are identified by grounds such as colour, race, religion or sexual orientation would get the protection required.

Honourable senators, there are those, of course, who oppose this bill because of an ill-considered assumption that special rights are being afforded a given group in society. This criticism is false because these opponents fail to understand the distinction between formal equality and substantive equality.

Formal equality refers to the equality in the form of the law and assumes that equality is attained if the law in its form treats everyone the same unless they are differently situated. Clearly, for a disadvantaged group, this theory poses several fundamental problems. It fails to deal with the reality that some groups in society are more subject to hate and violence than others groups. It defines equality as a question of sameness and difference rather than, honourable senators, as a question of dominance and subordination. It makes disadvantage invisible.

On the other hand, substantive equality means equality in the substance of one's condition. Therefore, the hate provisions of the Criminal Code explicitly state that the hate expressed against racial or religious groups is to be explicitly proscribed. In order to provide for the substantive equality to freedom from victimization for sexual orientation to be enjoyed by such an identifiable group, this explicit provision is required.

Honourable senators, the sad reality is that a great deal of harm and injury has been visited upon Canadian society by the purveyors of hate propaganda targeted on the basis of sexual orientation. Sadly, we read of reports of violence and discrimination in many parts of the country. This bill would extend protection to fellow citizens who are under attack and give substantive equality where it does not presently exist.

Furthermore, I reflect that attempts have been made by some to oppose this bill on the spurious argument that its adoption might result in parts of the Bible being criminalized. Such a claim, in my view, has no basis in law and no credible theological support. Indeed, in all of the faith traditions that I have studied the virtue of love always trumps the vice of hatred.

The debate on this bill in the other place saw some Canadian Alliance members raise this ill-based thesis, which all Canadians recognize as more fitting of the description of the proverbial crimson fish — the red herring.

It is not a serious objection. In reality, section 319(3) of the Criminal Code contains the protection of the right to free speech. Section 319(3) provides that no person shall be convicted of an offence under subsection (2) if he establishes that the statements communicated were true or if in good faith he expressed or attempted to establish by argument an opinion on a religious subject.

Remember, honourable senators, the other four grounds remain. Are we to suggest that a text of religious tradition — whether it be the Bible, the Koran or whatever — that makes comments about race or ethnic origin is a valid argument. It would have been addressed and we would have heard about it a long time ago. If that were the case, we would have heard about it long ago.

**The Hon. the Speaker:** Honourable senators, it is six o'clock.

Is it your wish, honourable senators, that we not see the clock?

**Some Hon. Senators:** Agreed.

• (1800)

**Hon. Gerald J. Comeau:** Far be it for me to attempt not to see the clock, but the Standing Senate Committee on Fisheries and Oceans has very important witnesses to hear at 6:15 p.m. Given that those witnesses have travelled all the way from Nunavut, I am asking permission of the Senate for the Fisheries Committee to meet while the Senate is sitting.

**The Hon. the Speaker:** Is leave granted, honourable senators, for the Standing Senate Committee on Fisheries and Oceans to sit at 6:15 p.m.?

[Translation]

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I have no problem allowing the Fisheries and Oceans Committee to meet, even if we do not see the clock and are still sitting. However, the Banking Committee also has witnesses who travelled a long way and who have not been heard. If we allow the Fisheries Committee to meet, then we have to do the same for the Banking Committee. I think we would be accommodating a lot of people, and we would not see the clock.

**Hon. Marcel Prud'homme:** Honourable senators, frankly the former minister and member of the government side is once again placing an unbearable burden on the shoulders of a few people who simply want to follow the rules. Today, we broke with a long tradition. I am strongly opposed to that. We all have schedules to keep. Senator Robichaud waits until 3:30 p.m. or 3:40 p.m. to rise and say: "Listen, just a few more minutes."

[English]

That is the way to run an orderly house. We expect that and we set our agenda accordingly, sometimes with a few minutes more or a few minutes less. It is not gracious for me to say that, but I felt that I should affirm my right. Why should all these senators speak today on this bill when we have Thursday, or next week, or



two weeks from now? We have established a new precedent and, in the British tradition, a precedent being established today will be thrown in our face after the recess in November. We have already done it. If we want to change the rules and the tradition, let us have a debate. I may agree to that and then we can do it.

Senator Comeau is putting an immense burden on our shoulders because these people have come from far away. Senator Kroft's committee has witnesses here from Toronto now, and he is still waiting. I am the only one who was not informed. Furthermore, the honourable senator who is to replace a member on the committee has not been told anything.

Your Honour, I do not know what to do, but I see that the member of the Banking Committee is here. He is in consultation. The new member is over there, as is the other one. We may not be too intelligent, but we are not that stupid. We see that we are the only people who are not consulted. If you want to play in a nice orchestra, then make sure everyone plays the same tune.

Personally, if senators want to sit, okay, sit; but I will not sit. The solution is as simple as reaffirming the principle that this is not the way to run our affairs, even if I am the only one who is saying it. Things will be said such as, "It is because of Prud'homme. It costs a fortune to bring back these witnesses." In an orderly fashion, we could do so.

We have had a long day. If my honourable friends do not wish to see the clock so that we continue sitting and committees are permitted to sit while the Senate is sitting, I do not know how many senators will be left in the chamber. We will not even have a quorum.

**The Hon. the Speaker:** Honourable senators, I am not sure how to interpret this matter. I have asked honourable senators if it is agreed that we not see the clock. Some conditions have been attached for agreement, and I gather they are that Senator Comeau would consent if he gets agreement for his Fisheries Committee to sit. Senator Robichaud has said that the Banking Committee should be added to the list.

Senator Cools, do you have something to say? We are discussing the point of whether leave will be granted.

**Senator Cools:** It takes more than leave to be granted for committees to sit. It takes a motion. Leave alone does not allow committees to sit. The committee chairmen would have to bring motions to allow the committees to sit. I would have loved to have heard Senator Kinsella complete his remarks, but I think he can complete them tomorrow. Let us see the clock, but first let us allow the committees to meet.

**The Hon. the Speaker:** I take it, then, there is no leave for me to not see the clock, honourable senators. I have no choice but to leave the Chair.

**Senator Prud'homme:** Your Honour, I want to be on record. I have had more than ample time this afternoon to make my point, and I was ready to say that you want to not see the clock, and that is okay. You want to sit, but I will not sit.

**The Hon. the Speaker:** Honourable senators, either we have leave or we do not. I gather we do not have leave.

**Senator Kinsella:** Honourable senators, if it is helpful, I am quite prepared to move the adjournment of the debate on the item that I was on and continue the rest of my time tomorrow.

**The Hon. the Speaker:** Honourable senators, would we agree, then, to not see the clock to this point so that Senator Kinsella might conclude by doing as he suggested?

Senator Roche does not agree, I gather?

**Hon. Douglas Roche:** Your Honour, I gave my consent last night to the general desire to end the sitting without going through the full scroll. Today, we have been going through the scroll. I have been waiting for two days to make a relatively short speech on Motion No. 146. I will give my consent to not see the clock now if I can speak on Motion No. 146 tonight, which will be a brief speech.

**Senator Cools:** But there is a motion before us, Your Honour.

**The Hon. the Speaker:** This is getting a little complicated. I will put Senator Roche's suggestion forward, but first I think I should go to Senator Kinsella and give him the opportunity to adjourn his debate. I will then come back to the issue of whether further time will be granted to not see the clock on Senator Roche's question.

It may be, honourable senators, that when I do return to Senator Roche and I say, "Are we agreed now to dispose of his item and not see the clock for that purpose?," that there will not be consent and we will return at 8 p.m. In any event, I will recognize Senator Kinsella now.

On motion of Senator Kinsella, debate adjourned.

## BUSINESS OF THE SENATE

**The Hon. the Speaker:** Honourable senators, we are now on the matter of leave. Senator Roche is withholding leave to not see the clock because he wishes to speak to Motion No. 146. Is there agreement that Senator Roche be allowed to give his speech and that we not see the clock for that purpose? Is there leave?

**Hon. Jean-Robert Gauthier:** Honourable senators, I have been patient in waiting to speak on Motion No. 92, which is the last item on the scroll. Every time I come here with my speech and I am ready to go, I cannot get the damn thing out. Please, could we have some order in place and know where we are going and who is speaking? Let us stop this nonsense about continuous questions.

**The Hon. the Speaker:** Where we are going is either I leave the Chair and return at 8 p.m. or we not see the clock. I will put it in those stark terms.

Senator Cools, it is now 6:10 p.m. I should have left the Chair 10 minutes ago. In respect for the rules, I must at least try to constrain the amount time we spend on deciding this question.

Honourable senators, we can deal with this question in one of two ways. Either we not see the clock, for which there must be unanimous agreement, or I leave the Chair.

Is it your wish, honourable senators, that we not see the clock?

**Some Hon. Senators:** Agreed.

**The Hon. the Speaker:** Agreed?

**Hon. Eymard G. Corbin:** Honourable senators, I want to note that there are committees, but others have also made plans for the evening. We did not expect to sit. Can the Deputy Leader of the Government give us an idea of how long we will be around here? That is all I want to know. That is a fair question.

• (1810)

**Hon. Fernand Robichaud (Deputy Leader of the Government):** The Leader of the Opposition is right in saying we are not on government business. He is right. I have an idea that there are two items that we would have to deal with, the motion from Senator Gauthier and the motion from Senator Roche. As to how much time it will take, I do not know.

**The Hon. the Speaker:** Are you on house business, Senator Cools?

**Hon. Anne C. Cools:** Yes, I believe in all fairness, Senator Comeau and the other senators should be allowed to move their motions so that their committees can sit at 6:15, and then Senator Roche would be able to speak, and everyone will be happy.

**The Hon. the Speaker:** Senator Comeau?

**Hon. Gerald J. Comeau:** I ask for leave to move that motion, that our committee be allowed to sit at 6:15, notwithstanding that the Senate is sitting.

**The Hon. the Speaker:** Is it agreed, honourable senators?

**Hon. Senators:** Agreed.

**Hon. Marcel Prud'homme:** I will be silent. I totally disagree, but I will not go further for today. I think I made my point all afternoon. I will come back much more vigorously next time. I think I have done enough to put our points together, and Mr. Speaker had a long day, so I will pretend that I am not even hearing what is going on.

**The Hon. the Speaker:** Is it agreed, honourable senators, for Senator Comeau to put his motion?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** Leave is granted.

**Senator Comeau:** I move that the Standing Senate Committee on Fisheries and Oceans be allowed to sit at 6:15, even though the Senate may then be sitting.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** Do you wish to make a motion, Senator Kroft?

**Hon. Richard H. Kroft:** I move that, notwithstanding the *Rules of the Senate of Canada*, the Standing Senate Committee on Banking, Trade and Commerce be allowed to be meet immediately. There are witnesses that have been waiting since four o'clock.

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** Senator Prud'homme?

**Senator Prud'homme:** If you shout for me too fast, you may have a different tone. Those who agree rapidly were not there for the full debate this afternoon, and I take strong objection to that.

I will repeat the same thing for Senator Comeau. I have made my point. I will not attend the committee. However, I hope that next week we will not go through this.

However, prior to allowing this committee to sit, I want Senator Robichaud to tell us that if Senator Roche speaks — he says 12 minutes; you all agreed to that — it will mean that every other item will be postponed until tomorrow.

**The Hon. the Speaker:** That is an unusual condition of consent. Let me ask one time — and I do not want conditional, unless it is absolutely necessary — is leave granted for Senator Kroft to put his motion for his committee to sit tonight?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** Leave is granted.

**Senator Kroft:** I move that the Standing Senate Committee on Banking, Trade and Commerce be allowed to sit at 6:20 this evening.



**Senator Prud'homme:** I want the record to show that I totally disagree, but I will not go further in saying no for Senator Kroft's committee to sit. However, I want to be on record saying that I object to the way we ran our affairs this afternoon. I want to see that on the record tomorrow in the newspaper.

**The Hon. the Speaker:** I cannot promise anything.

Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** Carried.

**FOREIGN AFFAIRS**

**MOTION TO REFER 2002 BERLIN RESOLUTION  
OF ORGANIZATION FOR SECURITY AND  
CO-OPERATION IN EUROPEAN PARLIAMENTARY  
ASSEMBLY TO COMMITTEE—ORDER STANDS**

On the Order:

Resuming debate on the motion, as modified, of the Honourable Senator Grafstein, seconded by the Honourable Senator Joyal, P.C.:

That the following resolution, encapsulating the 2002 Berlin OSCE (PA) Resolution, be referred to the Standing Senate Committee on Human Rights for consideration and report before December 31, 2003:

Whereas Canada is a founding member State of the Organization for Security and Economic Co-operation in Europe (OSCE) and the 1975 Helsinki Accords;

Whereas all the participating member States to the Helsinki Accords affirmed respect for the right of persons belonging to national minorities to equality before the law and the full opportunity for the enjoyment of human rights and fundamental freedoms and further that the participating member States recognized that such respect was an essential factor for the peace, justice and well-being necessary to ensure the development of friendly relations and co-operation between themselves and among all member States;

Whereas the OSCE condemned anti-Semitism in the 1990 Copenhagen Concluding Document and undertook to take effective measures to protect individuals from anti-Semitic violence;

Whereas the 1996 Lisbon Concluding Document of the OSCE called for improved implementation of all commitments in the human dimension, in particular with respect to human rights and fundamental freedoms and urged participating member States to address the acute problem of anti-Semitism;

Whereas the 1999 Charter for European Security committed Canada and other participating members States to counter violations of human rights and fundamental freedoms, including freedom of thought, conscience, religion or belief and manifestations of intolerance, aggressive nationalism, racism, chauvinism, xenophobia and anti-Semitism;

Whereas on July 8, 2002, at its Parliamentary Assembly held at the Reichstag in Berlin, Germany, the OSCE passed a unanimous resolution, as appended, condemning the current anti-Semitic violence throughout the OSCE space;

Whereas the 2002 Berlin Resolution urged all member States to make public statements recognizing violence against Jews and Jewish cultural properties as anti-Semitic and to issue strong, public declarations condemning the depredations;

Whereas the 2002 Berlin Resolution called on all participating member States to combat anti-Semitism by ensuring aggressive law enforcement by local and national authorities;

Whereas the 2002 Berlin Resolution urged participating members States to bolster the importance of combating anti-Semitism by exploring effective measures to prevent anti-Semitism and by ensuring that laws, regulations, practices and policies conform with relevant OSCE commitments on anti-Semitism;

Whereas the 2002 Berlin Resolution also encouraged all delegates to the Parliamentary Assembly to vocally and unconditionally condemn manifestations of anti-Semitic violence in their respective countries;

Whereas the alarming rise in anti-Semitic incidents and violence has been documented in Canada, as well as Europe and worldwide.

**Appendix**

**RESOLUTION ON  
ANTI-SEMITIC VIOLENCE IN THE OSCE REGION  
Berlin, 6 - 10 July 2002**

1. Recalling that the OSCE was among those organizations which publicly achieved international condemnation of anti-Semitism through the crafting of the 1990 Copenhagen Concluding Document;
2. Noting that all participating States, as stated in the Copenhagen Concluding Document, commit to "unequivocally condemn" anti-Semitism and take effective measures to protect individuals from anti-Semitic violence;

3. Remembering the 1996 Lisbon Concluding Document, which highlights the OSCE's "comprehensive approach" to security, calls for "improvement in the implementation of all commitments in the human dimension, in particular with respect to human rights and fundamental freedoms", and urges participating States to address "acute problems", such as anti-Semitism;
4. Reaffirming the 1999 Charter for European Security, committing participating States to "counter such threats to security as violations of human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief and manifestations of intolerance, aggressive nationalism, racism, chauvinism, xenophobia and anti-Semitism";
5. Recognizing that the scourge of anti-Semitism is not unique to any one country, and calls for steadfast perseverance by all participating States;
12. Urges all States to make public statements recognizing violence against Jews and Jewish cultural properties as anti-Semitic, as well as to issue strong, public declarations condemning the depredations;
13. Calls upon participating States to ensure aggressive law enforcement by local and national authorities, including thorough investigation of anti-Semitic criminal acts, apprehension of perpetrators, initiation of appropriate criminal prosecutions and judicial proceedings;
14. Urges participating States to bolster the importance of combating anti-Semitism by holding a follow-up seminar or human dimension meeting that explores effective measures to prevent anti-Semitism, and to ensure that their laws, regulations, practices and policies conform with relevant OSCE commitments on anti-Semitism; and
15. Encourages all delegates to the Parliamentary Assembly to vocally and unconditionally condemn manifestations of anti-Semitic violence in their respective countries and at all regional and international forums.—(*Honourable Senator Prud'homme, P.C.*).

The OSCE Parliamentary Assembly:

6. Unequivocally condemns the alarming escalation of anti-Semitic violence throughout the OSCE region;
7. Voices deep concern over the recent escalation in anti-Semitic violence, as individuals of the Judaic faith and Jewish cultural properties have suffered attacks in many OSCE participating States;
8. Urges those States which undertake to return confiscated properties to rightful owners, or to provide alternative compensation to such owners, to ensure that their property restitution and compensation programmes are implemented in a non-discriminatory manner and according to the rule of law;
9. Recognizes the commendable efforts of many post-communist States to redress injustices inflicted by previous regimes based on religious heritage, considering that the interests of justice dictate that more work remains to be done in this regard, particularly with regard to individual and community property restitution compensation;
10. Recognizes the danger of anti-Semitic violence to European security, especially in light of the trend of increasing violence and attacks regions wide;
11. Declares that violence against Jews and other manifestations of intolerance will never be justified by international developments or political issues, and that it obstructs democracy, pluralism, and peace;

An Hon. Senator: Stand.

**Hon. Marcel Prud'homme:** I think I should be consulted on that. It is under my name. At least, some should have the decency to ask if I want to speak on this. Stand.

[Translation]

## THE SENATE

### MOTION TO CREATE SPECIAL COMMITTEE TO OVERSEE IMPLEMENTATION OF BROADCASTING OF PROCEEDINGS—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Gauthier, seconded by the Honourable Senator Fraser:

That the Senate approve the radio and television broadcasting of its proceedings and those of its committees, with closed-captioning in real time, on principles analogous to those regulating the publication of the official record of its deliberations; and

That a special committee, composed of five Senators, be appointed to oversee the implementation of this resolution.—(*Honourable Senator Robichaud, P.C.*).

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, this motion by Senator Gauthier is an important one. Normally, such motions are studied first by the Committee of Internal Economy, Budgets and Administration. Senator Gauthier and Senator Bacon, the chair of that committee,



have been consulted, and they have consented to move that the motion be referred to the Standing Committee on Internal Economy, Budgets and Administration and to have that committee report on it by May 27, 2004.

**The Hon. the Speaker:** Honourable senators, it is moved by Senator Robichaud, seconded by Senator Gauthier:

That the motion be referred to the Standing Committee on Internal Economy, Budgets and Administration; and

That the committee report on it by May 27, 2004.

Is it your pleasure, honourable senators, to adopt the motion?

On motion of Senator Kinsella, debate adjourned.

**PARLIAMENTARY ASSOCIATIONS**

**INQUIRY—DEBATE ADJOURNED**

**Hon. Marcel Prud'homme** rose pursuant to notice of Thursday, May 8, 2003:

That he would call the attention of the Senate to the parliamentary associations, in particular their budgets and the very odd manner in which some of them, specifically the Inter-parliamentary Union, conduct their annual meetings.

**Hon. Marcel Prud'homme:** Honourable senators, Senator Day wished to say a few words, which will give me more time to prepare my remarks.

[English]

**Hon. Joseph Day:** I believe this is an important item for consideration, and therefore I ask honourable senators to consider the matter seriously.

**The Hon. the Speaker:** Are you wishing to adjourn for further time?

**Senator Day:** I would, honourable senators, like to do so, with the permission of my colleague, who has already adjourned the matter. With that permission, I would be pleased to do so.

**The Hon. the Speaker:** It is everyone's permission you are seeking. Did you want to speak to it, Senator Cools?

• (1820)

**Hon. Anne C. Cools:** I would have to take the adjournment, just in case.

**The Hon. the Speaker:** Senator Day will adjourn the debate.

**Senator Cools:** Perfect.

On motion of Senator Day, debate adjourned.

[Translation]

**ACADIAN YEAR, 2004**

**MOTION REQUESTING GOVERNMENT  
RECOGNITION—DEBATE ADJOURNED**

**Hon. Rose-Marie Losier-Cool,** pursuant to notice of June 19, 2003, moved:

That the Senate of Canada recommends that the Government of Canada recognize the year 2004 as the Acadian Year.

She said: Honourable senators, I promise you that my remarks will be brief. On June 19, 2003, I gave notice of motion that the Senate of Canada recommend that the Government of Canada recognize 2004 as the Acadian Year.

[English]

I thank my New Brunswick colleague, Senator Robertson, who is not here right now, for her Senator's Statement on September 17, in which she was in agreement with this demand.

[Translation]

The Government of Canada's recognition of 2004 as the Year of Acadia is extremely important to Acadians.

In 2004, many festivals will mark the 400th anniversary of the founding of the first permanent European settlement in North America at Port-Royal, in what is now Nova Scotia.

The expedition led by Pierre du Gua de Monts left the French port of H vre-de-Gr ce in March 1604 for Acadia. Among the approximately 120 souls on board were Samuel de Champlain, Jean de Biencourt, Fran ois Dupont-Grav  and Louis H bert.

In May 1604, a few weeks after leaving Le H vre, the flotilla of the Sieur de Monts arrived in La H ve, on Nova Scotia's Atlantic seaboard. The crew had crossed French Bay, known today as the Bay of Fundy, in search of mines and a good place to establish a settlement or trading post. While travelling up the St. Croix River, which now separates the State of Maine and New Brunswick, they discovered a small island.

Honourable senators, this gives you a brief historical overview of the early days of French settlement in North America. You will agree that after centuries of challenges and success, the Acadian people have reason to celebrate their ancestors' achievements.

Nova Scotia's Acadia is organizing its largest celebration since its foundation; the Congr s Mondial Acadien will be the most important gathering of Acadia's 400th anniversary. On September 6, the national historical site of Grand-Pr  will inaugurate its new interpretation centre. I am told it is a real gem. The *Grou Tyme* is preparing a major Acadian event for the Tall Ships 2004. Hundreds of youth will participate in the Festival Jeunesse de l'Acadie. This is a mere sample of what Nova Scotia is preparing.

In Newfoundland and Labrador, preparations are well under way. There will be construction of traditional Basque chaloupes and of bread ovens in various sites where the French fishermen worked, in addition to photo exhibits. Meanwhile, the Mi'kmaq and the people of Miquelon are planning the re-enactment, in July 2004, of the traditional canoe voyage to Miquelon made by the Mi'kmaq.

Prince Edward Island's Acadian community is pleased to be celebrating 400 years of history in the regions of West Prince, Evangéline, Summerside, Rustico, Charlottetown and the eastern part of the Island. The 2004 celebrations will be marked with festivals, family reunions, historical re-enactments, spectacular performances, and many other events. The Assemblée parlementaire de la Francophonie will hold its annual meeting in Charlottetown in 2004. More than 100 parliamentarians from all over the international Francophonie will be meeting in Acadia, where they will discover a vibrant segment of the Canadian and Acadian Francophonie.

In New Brunswick, 400 years of Acadian presence in North America will be celebrated in 2004, 400 years of successful community life. St. Croix Island is the site of the founding of the first permanent French settlement in America. There will be a spectacular celebration of that event on June 26, 2004. Throughout the entire year, a wide variety of activities will take place, all around the theme of sharing Acadian history.

Honourable senators, I invite you to join with the Acadian people, who want to show all Canadians how significantly their dynamism has contributed to the vitality of Canada and French life in North America. In this special context, the Acadian people believe that such a declaration by the Government of Canada would contribute to making the 400th anniversary of Acadia a more official event and recognize a significant date in the history of our country.

Thus, I ask the Senate to support this motion and ask the Government of Canada to recognize 2004 as the Acadian Year.

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I wholeheartedly support Senator Losier-Cool's motion.

On motion of Senator Kinsella for Senator Comeau, debate adjourned.

• (1830)

[English]

## UNITED STATES BALLISTIC MISSILE DEFENCE SYSTEM

### MOTION RECOMMENDING THE GOVERNMENT NOT TO PARTICIPATE—DEBATE ADJOURNED

**Hon. Douglas Roche**, pursuant to notice of September 17, 2003, moved:

That the Senate of Canada recommend that the Government of Canada refuse to participate in the U.S.-sponsored Ballistic Missile Defence (BMD) system, because:

1. It will undermine Canada's longstanding policy on the non-weaponization of space by giving implicit, if not explicit, support to U.S. policies to develop and deploy weapons in space;
2. It will further integrate Canadian and American military forces and policy without meaningful Canadian input into the substance of those policies;
3. It will make the world, including Canada, not more secure but less secure.

He said: Honourable senators, first, I should like to thank the Honourable Senators Robichaud and Kinsella for facilitating the possibility of making this speech tonight.

I want to advance three principal reasons why Canada should not participate in the U.S.-planned missile defence system.

First, ballistic missile defence, or BMD, will lead to weapons in space. Proponents of Canadian participation in BMD maintain that we will only be joining a ground-based interceptor system and that Canada will still hold to its longstanding policy opposing weapons in space. This is wrong.

The Missile Defense Agency has been very clear that the missile defence system will evolve over time. The system is to involve a layered defence, capable of intercepting missiles in boost phase shortly after launch, in mid-course in space, and in terminal phase as they near the target.

As a recent study by the American Physical Society pointed out, a terrestrial-based missile defence system will be incapable of intercepting missiles in boost phase launched from states such as North Korea and Iran, which will have at best a limited capacity to target the United States over the next several years. To account for this deficiency, the U.S. will have to deploy weapons in space.

It should not come as a surprise, then, that the Missile Defense Agency until recently planned to begin development of a space-based test bed in 2004, for deployment in 2008, in order to test space-based weapons. A recent announcement that the space-based laser development is being suspended must be taken in the context of the evolutionary nature of the system. The reason for the suspension is not one of principle, but of technology. As soon as the Missile Defense Agency can make a case for the feasibility of such development, funding approval from the Bush administration will not be far behind.

The administration's determination to be the first to weaponize space is also evident in numerous other initiatives sponsored by the Pentagon. In pursuit of the capability to strike any target on earth within minutes, the Pentagon intends not only to dominate near-earth space orbits, but also to maintain the capacity to deny

[ Senator Losier-Cool ]



their use to others. In place of a space-based laser, the army is currently seeking funding from Congress to develop terrestrial-based anti-satellite lasers. Clearly, the U.S. Department of Defense intends to prosecute future wars using weapons that are situated in, or directed at, outer space.

Ballistic missile defence is an integral part of this wider policy of placing weapons in space. The Canadian Nobel laureate Dr. John Polanyi has called BMD a conveyor belt to the weaponization of space. Canada cannot cut BMD up into little pieces and pick and choose in which it will be involved. The system is an integrated one, and has to be in order to function effectively.

Canada's traditional stand against weapons in space is rooted in our commercial and security interests. The Canadian economy is increasingly reliant on satellites for everything from communications and weather to surveillance and navigation. Placing weapons in space will put these important commercial assets at risk of becoming the collateral damage of a war in space.

At a time when the Canadian Department of National Defence is considering a draft Space Strategy 2020, which suggests Canada seek anti-satellite capabilities that stop just short of placing weapons in space, it is important for the Government of Canada to reaffirm Canada's policy. The government needs to recognize that BMD is not just an extended defence system but is one that will lead to weapons in space. As the system develops, it will be impossible to separate out, in any meaningful way, ground- and space-based elements. It will be one package leading to U.S. space-based dominance. Canadian participation in missile defence, no matter how modest, will constitute an endorsement of U.S. intentions to weaponize space, ending Canada's policy opposing weapons in space. That is the stark fact the government must face.

Second, honourable senators, it is a delusion to think that Canada can determine the direction of BMD. Some have argued that Canada should push for command and control of BMD to be put under NORAD, a binational command in which we have a significant role. This would enhance Canadian sovereignty, they say, because it would give us a "seat at the table" when decisions are made concerning the development and use of the system.

This idea is a fanciful and dangerous delusion. A brief survey of U.S. foreign and defence policy-making under the Bush administration shows a determination to proceed with policies irrespective of the positions of the U.S. allies, or the international community at large, even when such policies are in clear violation of international law. U.S. defence policy-makers clearly reject the idea that U.S. actions should be constrained by the system of collective security institutionalized in the United Nations.

In Iraq, the U.S. failed to obtain UN Security Council approval for its actions, as required under the UN charter. The reason is clear: Iraq did not pose an imminent threat to international

security, nor even to the U.S. itself. Instead of respecting the authority of the UN, the U.S. disregarded opposition in the Security Council and attacked nevertheless.

Recently, the Bush administration has come back to the UN seeking a resolution that will endorse the American occupation and hasten military and financial contributions from hesitant U.S. allies. Yet even now, faced with the enormous costs of proceeding unilaterally, the U.S. is reluctant to cede significant authority to the UN.

The U.S. is taking a similarly unilateral approach to nuclear disarmament in insisting that other states abide by the non-proliferation treaty by abstaining from acquiring or proliferating nuclear weapons, while the U.S. violates its own obligation, which it had reaffirmed as recently as 2000, to negotiate the destruction of its nuclear stockpiles. Instead, the Pentagon is opting to develop new nuclear weapons and to advance strategies for using nuclear weapons in war fighting. From these examples, it is clear that, when the Bush administration calls for international cooperation, what it really means is subjugation — the subjugation of the interests of other states to the will of the United States.

So, when the Pentagon invites Canada to participate in BMD, we should not be under any illusion about our role in the system. Regardless of where command and control of BMD is located, whether in the binational NORAD program or in the U.S. commands of NORTHCOM or STRATCOM, it is U.S. policy that will determine how the system is developed and deployed. If Canadians in NORAD object to the weaponization of space, or to other aspects of BMD policy, the U.S. will simply move that section of BMD to a command under its exclusive jurisdiction.

The U.S. has clearly shown that when it comes to what it considers its national security interests, it will not be constrained by the opinions of its friends and allies nor, even as it showed in Iraq, by the dictates of international law. It is an outright fantasy to believe that the Bush administration will defer to Canadian concerns regarding its flagship national security policy of BMD. Instead, Canadian participation in BMD will inevitably embrace and endorse the American policy agenda for missile defence, with no prospect for meaningful input into that agenda.

Third, honourable senators, BMD means less security for Canada. The system to be deployed in 2004 is, according to the Pentagon, aimed at protecting against an accidental missile firing by a nuclear weapons state, or an intentional missile launch by a so-called rogue state with only a limited number of missiles. If, as the American Physical Society claims, that system will be ineffective against even such a limited attack, then it will have to be supplemented with further developments, including the deployment of weapons in space, to function as planned.

Since the BMD system will never be 100 per cent effective, it will depend on a functioning arms control regime to limit the capacity of potential aggressors to overwhelm the system. In fact, it will depend on the arms control regime, while at the same time undermining the very foundations of that regime — the principle that nations agree to mutual disarmament in order to create a more peaceful environment for all.

It is understandably difficult to convince such states as North Korea to end their nuclear programs for good, while the U.S. is ready, willing and able to attack any nation, not in self-defence as provided for under Article 51 of the UN Charter, but whenever it deems a regime change to be sufficiently in its national interest.

BMD is an integral part of the U.S. defence policy, which includes the doctrine of pre-emption set out in the national security strategy and the development and use of nuclear weapons in warfare proposed by the Nuclear Posture Review. The missile defence system is intended to protect the U.S. homeland, but it will also shield U.S. forces deployed overseas. This is not merely a defensive system, but one that will actively contribute to U.S. offensive operations, including pre-emptive invasions such as the recent U.S. actions in Iraq.

• (1840)

Instead of trying to shoot down missiles before they land with a limited rate of success, it would be more appropriate and effective to work to ensure that missiles are never launched in the first place. The only way to achieve this is through international cooperation, a longstanding focus of Canadian foreign policy. To succeed, cooperation requires parties on all sides to negotiate in genuine good faith, instead of proceeding unilaterally with programs that threaten and further antagonize potential adversaries.

Honourable senators, it is abundantly clear that the U.S. administration is rushing to deploy the opening phases of a missile defence system by the fall of 2004 in order to make a political statement to the American people prior to the 2004 presidential election. The present U.S. aggressiveness on missile defence is being driven by the White House, not by the

scientific community. The military-industrial complex has virtual control of the present administration. This may well change when the American people, so traumatized by the terrorist attacks of September 11, 2001, eventually recover their balance. Meanwhile, the reckless policies of the Bush administration are threatening the system of collective security painstakingly constructed over the last six decades.

I applaud the stand taken by Prime Minister Chrétien against the U.S.-led war on Iraq, which contravened the will and authority of the UN Security Council. However, our decision on BMD should not be a casualty of our willingness to stand up to the United States over Iraq. In respect of Iraq, we made our decision based on the values and interests of Canada and, as a result, have upheld our reputation as a good international citizen. In the discussions currently underway with the Americans on missile defence, we need to focus once again on the real values and interests of Canada: the maintenance of international security, the effective functioning of arms control regimes and the maintenance of a weapons-free space environment.

This is what a host of NGOs in Canada, including such important groups such as the Liu Institute, Project Ploughshares and the Group of 78, are now urging the government to pursue.

Honourable senators, Canada must not compromise its values by joining this imprudent U.S. military plan that scientists say will not work; that analysts say is destabilizing; and that ethicists say is distracting the world from investing in true human security. This is a critical moment for Canada to stand up for its values instead of abandoning them in deference to misguided and, perhaps, transitional American pursuits. Saying no to missile defence will strengthen Canada's ability to continue to push for a world ruled by international law, upheld through international cooperation.

On motion of Senator LaPierre, debate adjourned.

The Senate adjourned until tomorrow, Thursday, September 25, 2003, at 1:30 p.m.



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CANADA

# Debates of the Senate

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OFFICIAL REPORT  
(HANSARD)

Thursday, September 25, 2003

—

THE HONOURABLE DAN HAYS  
SPEAKER

2003-09-25  
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## OFFICIAL REPORT

### CORRECTION

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):**  
Honourable senators, there is an error found at page 1919 of yesterday's *Debates of the Senate*. In the sixth paragraph in the right-hand column, I twice used the legal technical term "*eiusdem generis*" but it was recorded as "*ad justum generis*."

I would ask that the official record be corrected. Further, I would ask that the word "generous" following *eiusdem generis* in the fourth line be deleted.



## THE SENATE

Thursday, September 25, 2003

The Senate met at 1:30 p.m., the Speaker in the Chair.

Prayers.

### DISTINGUISHED VISITOR IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, before proceeding to Senators' Statements, I should like to draw to your attention the presence in our gallery of our former colleague, the Honourable Louis Robichaud.

## SENATORS' STATEMENTS

### GOVERNOR GENERAL

**Hon. Laurier L. LaPierre:** Honourable senators, since her arrival at Rideau Hall, Her Excellency, the Right Honourable Adrienne Clarkson, Chancellor of the Order of Canada, Governor General and Commander-in-Chief of Canada, has been a most assiduous and creative person who has contributed enormously and indefatigably to our country and to our awareness of its immensity and heritage.

Her Excellency has facilitated us in encountering magnificent people from all over the planet who have chosen to build their homes on this vast northern land. Through her vivid admiration and appreciation of their enrichment of our country, she has opened our hearts to the worth and value of the First Peoples of Canada as she has travelled extensively on their lands and engaged in a warm and respectful dialogue with them.

I would encourage all honourable senators to see the magnificent film from the National Film Board, *An Idea of Canada*, which recounts the trips of Their Excellencies in the North. It is simply magical.

Able aided by His Excellency, Madame Clarkson has awakened us to our many dimensions through culture and art. She sees in Canada an important instrument for the maintenance of peace and security in the world, an effective tool to assist the young in their search for life, and a constant reminder that unity can only proceed from harmony and respect for diversity.

All these messages Madame Clarkson brings in her travels within the borders of Canada and in her successful visits, on our behalf, to other countries of the planet. She is a superb ambassador and her official visits, which include representations

of who we are, what we have achieved and what we hope to do, are pilgrimages of hope.

Madame Clarkson's missions and her person ought not be denigrated by political irresponsibility and journalistic stupidity, as is currently the case. We Canadians owe her much. By the way, I have never travelled with her abroad, and probably I will not.

### AGRICULTURE AND AGRI-FOOD

#### BOVINE SPONGIFORM ENCEPHALOPATHY— AID TO CATTLE INDUSTRY

**Hon. Donald H. Oliver:** Honourable senators, I rise today to speak to the absence of a definitive action plan on the part of the government to aid our cattle industry.

Other parties have done so. For example, Peter MacKay, leader of the Progressive Conservative Party, has attempted to ease the situation our beleaguered farmers are currently facing. Mr. MacKay made the PC position clear by offering to lead a delegation to the United States. Mr. MacKay believes that only through high level lobbying in support of reopening the borders to all Canadian beef exports will the cattle industry begin to recover. The government rejected his offer.

Honourable senators, Canada exports approximately 60 per cent of its cattle production. In 2002, cattle and beef farmers contributed \$4.5 billion to the economy. When the United States closed its borders, 80 per cent of our exports were suddenly undeliverable. This closure cost the cattle industry an estimated \$18 million per day — \$11 million in lost exports and \$7 million because cheap cuts of beef suddenly plummeted in price.

The government responded to this lost revenue by giving the agriculture industry more than \$460 million through a temporary national assistance program. However, when the program expired in August of this year, less than \$10 million of that money had actually reached farmers in need. This is not the definitive action plan that our cattle farmers need.

Rather than clearly stating their intentions, the federal government has adopted a "throw-money-at-it" approach to solve the BSE problem. Honourable senators, the mad cow crisis will not be solved with money alone. The only viable solution to helping our ranchers and all others affected by this crisis is to get Canadian beef across the border into the United States.

Honourable senators, it is time for the Government of Canada to show leadership. A delegation needs to be sent to lobby on behalf of the Canadian beef industry. Only through these definitive measures will the government ensure that our industry will recover from BSE.

## FISHERIES AND OCEANS

## EFFECT OF POLYCHLORINATED BIPHENYLS

**Hon. Ione Christensen:** Honourable senators, I would like to draw your attention to an alarming new scientific study that was concluded on polychlorinated biphenyls, otherwise known as PCBs. This study was on sockeye salmon spawning in lakes of northern British Columbia and Alaska. Dr. Jules Blais, of the University of Ottawa, led this important study that was undertaken over the last three years. The findings are published in the scientific journal *Nature*.

As honourable senators will be aware, PCB contaminants are highly carcinogenic agents. Once they make their way into the food chain — from fish to bears or eagles and even humans — they can potentially cause reproductive defects, memory impairment and reduced hand-eye coordination.

Dr. Blais' results were shocking. He found that incredible amounts of PCBs were being released from salmon, which had migrated from the oceans back to the lakes to spawn and then to die. Their decomposing bodies were leaching the PCBs into the lakes of Alaska and British Columbia in very high amounts. These toxins were delivered into the lake sediments and hence taken back up into the food chain.

The findings revealed that the PCB levels released in these areas rivalled those found near a hazardous waste incinerator. Honourable senators, there are no large industries located in these areas. PCBs are now found in such things as flame-retardants and paints. They are also emitted through burning waste. These findings came from a pristine wilderness.

• (1340)

Honourable senators, once again we are discovering the smallness of our planet and the myriad ways in which our thoughtless use and disposal of hazardous waste come back to haunt us.

## THE LATE JOHN R. (JOHNNY) CASH

## TRIBUTE

**Hon. Wilfred P. Moore:** Honourable senators, I rise today to pay tribute to John R. Cash, late, of Hendersonville, Tennessee, publicly known as Johnny Cash or the "Man in Black." Born in Kingsland, Arkansas, on February 26, 1932, he departed this life on September 12, 2003, at 71 years of age at Nashville, Tennessee.

Johnny Cash began his career in the music business in 1956 at Sun Records in Nashville. From that beginning, he was always at the forefront of country music, whether as a songwriter, musician, recording artist or television show host. A generous man, he gave opportunity to numerous new performers and provided work for many other performers, known and unknown alike. Along the way, like each one of us, he fought his demons. He strove to be true to his cotton farm roots and his strong family values.

I met Johnny Cash in 1958 in Halifax during his first Canadian tour. I always attended his shows, sometimes went to rehearsals, and always went backstage before showtime to welcome him back to Nova Scotia and to wish him well. He never forgot his fans.

His last visit to Halifax was in 1996 with the "Highwaymen" tour. We got together backstage before that show at the Halifax Metro Centre, a performance that I enjoyed from great seats — appropriately, in the penalty box, which I shared with a lifelong fan of Johnny's, my friend Tom Faulkner.

Johnny had a strong affection for Canada, and not just for touring and vacationing. In 1968, during a performance in London, Ontario, he proposed on stage to June Carter, a member of the Carter family, the legendary first family of country music. They married later that year, and for her he walked the line.

Over his 47-year career, Johnny Cash was the ultimate storyteller. He entertained people with tales of their greed and their goodness, their losses and their loves, their tragedies and their triumphs. In an Associated Press interview in 1987, June gave perhaps the finest recognition to her husband when she said:

There's a lot of power to him. I've seen him on shows with people with a No. 1 record or a lot of No. 1 records, but when John walks on that stage the rest of 'em might as well leave.

It has been a tough year for the Cash family. June Carter Cash, Johnny's mate and spirited stage partner, passed away on May 15, and now Johnny.

In the September 22 edition of *Time* magazine, it is written:

...if some felt shock at the news of Cash's passing, they could segue into celebration over a difficult life made exemplary, an outlaw redeemed by a woman's devotion. Besides, if you believe, the Man in Black is now garbed in white, and the doting husband has eternity to spend with his beloved.

So it is with heartfelt sincerity that we convey to John Carter Cash, the son of Johnny and June, and to the extended Cash family, our deepest sympathy at this time of great loss.

[Translation]

## LE DROIT

## NINETIETH ANNIVERSARY OF FOUNDING

**Hon. Jean-Robert Gauthier:** Honourable senators, on September 22, 2003, the Library of Canada and Archives Canada and the management of *Le Droit* hosted a reception to celebrate the 90th birthday of the newspaper, which was founded on March 27, 1913.

Over the years, *Le Droit* has served the francophone community of the National Capital Region very well.



On the Ontario side, the historical roots of *Le Droit* run deep. After the province of Ontario passed Regulation 17 — which, you will recall, banned teaching in French in elementary schools — Father Charlebois of the Oblate Order launched *Le Droit*, a newspaper dedicated to defending and promoting the French language in this region.

*Le Droit* has always supported the demands of the francophone communities, in its articles and also in its editorials, which often backed us up in our demands.

Whether the issue involved was education at the elementary, secondary or post-secondary level in Ontario, or health and social services, this newspaper has always reported the debates with great objectivity, casting light on the issues and constantly providing us, the francophones of the region, with the vital support we needed.

*Le Droit* is unique, being the only French-language newspaper in Ontario and the Outaouais, and today we all continue to find it indispensable. It always has a thumb on the pulse of the community, and keeps us informed with quality reports and editorials from its excellent staff.

On a more personal note, I was a *Le Droit* carrier myself. At last week's reception, I was very moved by the poster that was used on the podium. It featured the front page of the September 11, 1939 issue, with the headline "Canada at War."

Carrying a newspaper with such a headline really impressed that 9-year-old paper boy, and I remember it well. At that age, a child cannot really grasp what a traumatic thing it is for a country to be at war. Traumatic for those actually involved, and for the country that must support the war effort.

And now we have reached the 21st century. *Le Droit* is now part of the large Gesca family, a rather large firm. I hope you enter this century with the same convictions and strength you had in your beginnings and never forget your motto: "The future belongs to those who fight."

## ROUTINE PROCEEDINGS

### INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

#### SIXTEENTH REPORT OF COMMITTEE PRESENTED

**Hon. Lise Bacon**, Chair of the Standing Committee on Internal Economy, Budgets and Administration, presented the following report:

Thursday, September 25, 2003

The Standing Committee on Internal Economy, Budgets and Administration has the honour to present its

#### SIXTEENTH REPORT

Your Committee recommends the following:

- that an increase of 2.5 per cent to the salary ranges of the Senate senior management employees (Senior Executive Group level 1-3 and Middle Management Group level 2) be awarded effective April 1, 2003;
- that one day of personal leave per year be granted to incumbents of SEG positions, in the fiscal year 2003-2004.

Respectfully submitted,

LISE BACON  
Chair

**The Hon. the Speaker:** Honourable senators, when shall this report be taken into consideration?

On motion of Senator Bacon, report placed on the Orders of the Day for the next sitting of the Senate.

### FISHERIES AND OCEANS

#### BUDGET ON STUDY OF QUOTA ALLOCATIONS AND BENEFITS TO NUNAVUT AND NUNAVIK FISHERMEN—REPORT OF COMMITTEE PRESENTED

**Hon. Gerald J. Comeau**, chair of the Standing Senate Committee on Fisheries and Oceans, presented the following report:

Thursday, September 25, 2003

The Standing Senate Committee on Fisheries and Oceans has the honour to present its

#### SIXTH REPORT

Your Committee, which was authorized by the Senate on Monday, June 16, 2003 to examine and report upon matters relating to quota allocations and benefits to Nunavut and Nunavik fishermen, respectfully requests that it be empowered to engage the services of such counsel and technical, clerical and other personnel as may be necessary.

Pursuant to section 2:07 of the *Procedural Guidelines for the Financial Operation of Senate Committees*, the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that Committee are appended to this report.

Respectfully submitted,

GERALD J. COMEAU  
Chair

(For text of report, see today's Journals of the Senate, Appendix A, p. 1064.)

**The Hon. the Speaker:** Honourable senators, when shall this report be taken into consideration?

On motion of Senator Comeau, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

• (1350)

## HUMAN RIGHTS

### BUDGET ON STUDY OF SPECIFIC CONCERNS— REPORT OF COMMITTEE PRESENTED

**Hon. Laurier L. LaPierre**, member of the Standing Senate Committee on Human Rights, presented the following report:

Thursday, September 25, 2003

The Standing Senate Committee on Human Rights has the honour to present its

### FIFTH REPORT

Your Committee, which was authorized by the Senate on Wednesday, May 27, 2003, to hear from time to time witnesses, including both individuals and representatives from organizations, with specific Human Rights concerns, respectfully requests for the purpose of this study that it be empowered to travel outside of Canada.

Pursuant to section 2:07 of the *Procedural Guidelines for the Financial Operation of Senate Committees*, the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that Committee are appended to this report.

Respectfully submitted,

LAURIER LAPIERRE

(For text of report, see today's Journals of the Senate, Appendix B, p. 1070.)

**The Hon. the Speaker:** Honourable senators, when shall this report be taken into consideration?

On motion of Senator LaPierre, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

[English]

## BANKING, TRADE AND COMMERCE

### BUDGET ON STUDY OF BANKRUPTCY AND INSOLVENCY ACT AND COMPANIES' CREDITORS ARRANGEMENT ACT— REPORT OF COMMITTEE PRESENTED

**Hon. Richard H. Kroft**, Chair of the Standing Senate Committee on Banking, Trade and Commerce, presented the following report:

Thursday, September 25, 2003

The Standing Senate Committee on Banking, Trade and Commerce has the honour to present its

### THIRTEENTH REPORT

Your Committee, which was authorized by the Senate on Tuesday, October 29, 2002, to examine and report on the administration and operation of the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangement Act*; respectfully requests approval of additional funds for 2003-2004.

Pursuant to Section 2:07 of the *Procedural Guidelines for the Financial Operation of Senate Committees*, the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that Committee are appended to this report.

Respectfully submitted,

RICHARD H. KROFT  
Chair

(For text of report, see today's Journals of the Senate, Appendix C, p. 1076.)

**The Hon. the Speaker:** Honourable senators, when shall this report be taken into consideration?

On motion of Senator Kroft, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

## QUESTION PERIOD

### FOREIGN AFFAIRS

#### SAUDI ARABIA— MALTREATMENT OF INCARCERATED CANADIAN CITIZEN

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I have a question for the Leader of the Government in the Senate. In today's *Ottawa Citizen* there is a headline that speaks of the position of one of our freshmen senators of two days, our colleague Senator Harb, who doubts that William Sampson was tortured in a Saudi Arabian prison. Is that position the position of the Government of Canada?

**Hon. Sharon Carstairs (Leader of the Government):** As I am sure the honourable senator knows, because I know he is an avid reader of news reports and also watches television, the Minister of Foreign Affairs has indicated that in his view Mr. Sampson should be believed.

**Senator Kinsella:** I thank the government leader for that clarification.



Given that her colleague Mr. Graham, the Minister of Foreign Affairs and International Trade, has made that statement — a statement with which I agree — could the Leader of the Government in the Senate provide me with an answer to the question I asked yesterday? I raised the issue of the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, to see whether the Government of Canada intends to file a complaint against the Kingdom of Saudi Arabia, which is also a party to that same international convention. Does the minister have an answer to that question yet?

**Senator Carstairs:** At this point, the preferred option of the Government of Canada would be for Mr. Sampson to use the processes available to him in Saudi Arabia. He could formally make a complaint to the Saudi Arabian government and receive every bit of assistance to make that complaint. Of course, when a complaint has been made by a Canadian citizen, it is much easier for the Government of Canada to act on that citizen's behalf.

**Senator Kinsella:** In this particular case, because a colleague of the honourable minister in the other place, the House Leader Don Boudria, visited Mr. Sampson while he was in the Saudi prison, the issue is a little more joined than otherwise would have been the case.

I am also mindful of the application of the principle of the non-exhaustion of domestic remedies. When it comes to international human rights law, a mechanism outlined in article 21 of the convention provides that a state party, which would be Canada in this instance, can file a written complaint with the offending state party. Students of comparative human rights are not overly excited with the domestic mechanisms for the protection of human rights in the Kingdom of Saudi Arabia. Be that as it may, rather than be passive and wait for the victim, Mr. Sampson, to file a complaint under domestic procedures, will the Government of Canada seize the opportunity provided by article 21 of this convention and file a complaint against the Kingdom of Saudi Arabia?

**Senator Carstairs:** The honourable senator opposite made reference to Mr. Boudria's visit on behalf of the Government of Canada. As he knows, Mr. Boudria has publicly indicated that when that meeting took place, Mr. Sampson made no complaint to him of having been tortured.

• (1400)

In terms of the honourable senator's further question, the position of the government is clear. The government believes that the appropriate way to deal with this matter is for Mr. Samson to lay a complaint. As honourable senators know, Mr. Samson is recovering. When he feels capable of doing so, he may consider laying that complaint. Obviously, that would bolster any further action the Government of Canada may take on his behalf.

**Senator Kinsella:** Honourable senators, the minister's answer brings home to us a very important point. It is this: A minister of the Canadian cabinet visited the prison and met with

Mr. Samson. As the minister in this place has told us quite correctly, Mr. Samson did not complain of being tortured to Mr. Boudria. The fact of the matter is that in the room in which Mr. Boudria was visiting Mr. Samson other people were present, including two of the perpetrators of the torture.

Mr. Samson has stated publicly that he feared for his life because he had been warned that, if he said anything to Mr. Boudria, other than that he was being very well treated, the torture he had suffered to that point would be minor compared with what would happen afterward.

Indeed, I grant that it was with the best of intentions that Mr. Boudria went to visit Mr. Samson. However, Mr. Boudria's visit inadvertently provided a cover for the torture the Saudis were perpetrating upon this Canadian citizen. For this reason, it seems to me that there is now a greater obligation upon the Government of Canada, in light of what has happened, to file the appropriate complaint and let the matter be adjudicated by an international arbitrator.

**Senator Carstairs:** Honourable senators, the honourable senator has addressed the issue of Mr. Boudria's trip. Interestingly, in news reports that I have read, reports that prompted Mr. Boudria to make the statement, Mr. Samson in fact says that he did tell Mr. Boudria that he was being tortured. Mr. Boudria says that he did not tell him that. That is why, in part, the Government of Canada believes that in this instance it is very important that Mr. Samson make that formal complaint. As I said, Mr. Samson first needs to return to good health. It will then be relatively easy for the government to move further on his behalf.

## CITIZENSHIP AND IMMIGRATION

### NATIONAL BIOMETRIC IDENTIFICATION CARD

**Hon. Donald H. Oliver:** Honourable senators, once again my question for the Leader of the Government in the Senate is about a national ID card.

Last week, the Privacy Commissioner of Canada, Robert Marleau, told a parliamentary committee that a biometric national identification card would have a start-up cost of about \$3 billion. Mr. Marleau also said that the ongoing operational costs of such a card would be very substantial. This estimate is similar to one that came from the Department of Human Resources, in 1999, which projected the cost at that time to be \$3.6 billion.

How can the federal government justify spending between \$3 billion and \$5 billion, in the words of Mr. Marleau, on "unworkable and unjustified" national identity cards, considering the urgent economic needs of our health care system, our military and, indeed, our farmers who are suffering the setbacks of BSE?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, that is exactly why no cabinet decision has been made.

We are conducting an open and public debate on a national ID card, including the enormous costs of such a card. We will be seeking the views of Canadian citizens on that type of identity card. Until that public debate takes place, I can assure the honourable senator that no decisions will be made.

**Senator Oliver:** Honourable senators, although many people have offered their opinions on the proposed national identity card, one person in particular has not made his views on this matter known at all. I refer to Mr. Paul Martin, the prime minister in waiting.

Mr. Martin has said little on this matter, outside the statement that he is "somewhat sceptical of the concept." We know that Mr. Martin's disapproval of a certain proposed legislation has already had a big impact on whether it has received support in the Liberal caucus.

Could the Leader of the Government tell the Senate if Mr. Martin's apparent disapproval of this proposal means that the Department of Citizenship and Immigration will not be presenting a formal proposal to the Canadian public on this matter?

**Senator Carstairs:** Honourable senators, when, and if, Mr. Martin becomes the Prime Minister of Canada, I am sure he will make known his views to the Department of Citizenship and Immigration.

**Hon. Eymard G. Corbin:** Honourable senators, my question is supplementary and from another angle to the previous question.

The Forum on Biometrics: Implications and Applications for Citizenship and Immigration will be held here in Ottawa on October 7 and 8. That forum is being sponsored by the Minister of Citizenship and Immigration, Mr. Coderre. On the one hand, the minister says that by launching this forum he wants to consult all Canadians on the merits of a national identity card. On the other hand, the draft program shows that 10 of the 14 forum participants openly support the identity card or are in the business of biometric technology.

Could the Leader of the Government in the Senate tell us whether the minister has already decided in favour of a national biometric identity card or an identity card of any other media?

**Senator Carstairs:** I thank the honourable senator for his supplementary question. I think the views of Mr. Coderre on this matter are public. He has certainly indicated that while he wants a debate, he is somewhat in favour of this card.

However, it is not a decision that he will make. It is a decision that will be made by the cabinet, including the Prime Minister. That decision will not be made until after thorough debate, including balanced debate. That is why I welcome the fact that the Standing Committee on Citizenship and Immigration in the other place is also conducting a study.

As we know, parliamentary committees tend to canvass both opinions. In my experience, they often canvass the negatives more

than they canvass the positives. Thus, one would hope that, in light of both these debates and discussions taking place, cabinet will have the best of both sides before they have to make a decision.

**Senator Corbin:** Honourable senators, I wish to follow up on that comment and to focus on the forum exercise, which I am afraid will turn into a promotional exercise more than anything else.

In view of the fact that in the past the minister has emphasized the importance of a vigorous debate that reflects all sides of the issue, why then does the forum not provide those opposed to the biometric identity card, or any other medium card, an equal opportunity to argue their point of view? By apparently excluding opponents of the identity card — and I gather this from my reading of the program — is not the minister contradicting his commitment to hear all sides of the debate, thereby undermining the purpose and utility of the forum?

**Senator Carstairs:** Honourable senators, unlike the honourable senator, I have not seen a program for this forum. However, I can assure the honourable senator that I shall bring to the attention of Minister Coderre his concern that this forum is not a balanced presentation and that there seems to be a disproportionate number of supporters attending the forum and not the balance necessary for a vigorous debate.

## JUSTICE SOLICITOR GENERAL

### FIREARMS REGISTRY PROGRAM—EMPLOYEES ASSIGNED TO PROCESSING—TRANSFER OF FUNDS IN SUPPLEMENTARY ESTIMATES (A)

**Hon. Gerald J. Comeau:** Honourable senators, both the Department of Justice and Solicitor General Canada responded to a recent access to information request. The department responded that it had no employees or contractors working on the gun registration program as of February 20, 2003, April 15, 2003 and June 30, 2003.

• (1410)

Why, then, does the Supplementary Estimates report of the Canadian Firearms Centre, under the auspices of the Solicitor General, show a personnel budget of \$22.6 million if there were no employees working as of those dates?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I will take that particular question as notice. I am not sure I understand exactly the intent of it and I want to read it carefully.

I should like to reassert what I said yesterday and the day before: In the Supplementary Estimates, for the third time that I have sought clarification, I have been given exactly the same answer — namely, that this is simply a transfer of money from one line of one ministry's budget to another line of another ministry's budget.



**Senator Comeau:** On that note, we will pursue this further on Tuesday. I understand officials from the Treasury Board will be appearing before us at that time. We will want to know why they call the \$10 million a "new appropriation" if it is in fact a transfer from one ministry to another ministry. We will also want to know why the term "new appropriation" is used.

With respect to my question, under access to information we gave three specific dates to get a sense of how many employees were working in the gun registration program at that time. I have indicated those dates. The response was very clear: No employees were working on those dates.

I have a secondary question for the minister as she determines why there were no employees there. During those critical periods of the firearms registration program, when hundreds of thousands of Canadians were trying to register their guns and getting no response, why were there no employees?

**Senator Carstairs:** As the honourable senator knows, there was a rollback in real terms. They requested less money than they originally indicated they would need. I would assume that might be why there were no employees at that particular time. It is important that I take that question as notice. The honourable senator is entitled to a fulsome response and I do not have that here with me today.

## UNITED NATIONS

### SPEECH BY PRIME MINISTER— CRITERIA FOR HUMANITARIAN INTERVENTIONS

**Hon. A. Raynell Andreychuk:** Honourable senators, this week, in his speech before the United Nations General Assembly, the Prime Minister advocated putting the protection of people at the heart of the mandate of the United Nations. He invoked the genocides in Bosnia and Rwanda and the world's failure to react to them as reasons for justifying humanitarian intervention.

However, the Prime Minister did not mention Kosovo, where Canada, along with NATO, intervened on a humanitarian basis, apparently. The Prime Minister said further in the United Nations that:

We believe ... that in the face of large scale loss of life or ethnic cleansing, the international community has a moral responsibility to protect the vulnerable. The primary purpose must be to avert and end human suffering.

He suggested that the United Nations be reformed to improve its effectiveness in this regard. In a news conference later that day, the Prime Minister clarified that such intervention would have to be conducted sparingly. He noted that for intervention to be triggered it would have to be clear that it is an absolutely devastating situation.

Has Canada put forward criteria that would be used to determine which situation is absolutely devastating? If these criteria exist, were they applied in Kosovo and will Canada

continue to use them in its own assessments in addition to putting them forward to the United Nations?

**Hon. Sharon Carstairs (Leader of the Government):** As the honourable senator indicated, the Prime Minister made this speech to the United Nations on Tuesday. He indicated his need not only for reform of the United Nations but also for the United Nations to work collectively in these situations. To my knowledge, no specific criteria have been developed by the United Nations to deal with such situations. I would suggest that this is the first time such a proposal has been made to them by a head of state. In terms of Canada's position, each decision is made on a case-by-case basis.

**Senator Andreychuk:** Honourable senators, I believe the Prime Minister did raise this issue with other leaders in the United Kingdom some time ago. He received a lukewarm response, particularly because they were reluctant to enter into this type of decision when there are no formal criteria. We are concerned that it could be too subjective and not objective.

The Prime Minister has had some time to think about his position, and I am wondering why it would be raised again in the United Nations' context without the further need to clarify what criteria would be used for such interventions?

**Senator Carstairs:** Honourable senators, it would be presumptuous for the Prime Minister of Canada to establish the criteria for the United Nations. It would be up to the United Nations to establish that criteria. I think the Prime Minister has helped to establish what I hope will be a new agenda for the United Nations.

**Senator Andreychuk:** Perhaps this is a new change in foreign policy, because Canada certainly has put forward suggestions to the United Nations many times, decades before. We have an excellent track record in the United Nations not only for putting forward ideas but also for putting them in a pragmatic form that can be implemented.

It is laudable to wish to stop dead at the station, but if we wish to be successful at the United Nations, I think we will have to return more to the approaches of previous Prime Ministers — many of whom put forward pragmatic approaches. This would have to include criteria.

Is Canada working on some criteria that could be interpreted as suggestions to the United Nations?

**Senator Carstairs:** The honourable senator's statements a few minutes ago indicated — and I certainly support that indication — that this is a subjective issue. Indeed, it is a subjective field. Therefore, to be entirely pragmatic on something subjective is, I would suggest, an oxymoron.

Our Prime Minister has put forward an excellent idea. It is a challenge that he has put before other national leaders — as the honourable senator has indicated — in the UK and at the Commonwealth meeting. It needs to be debated and discussed, but in such a way that recognizes the subjectivity of this particular topic.

**Senator Andreychuk:** Honourable senators, surely the subjectivity comes when we state that in general principles of absolutely devastating situations, we should have interventions.

It would be much more helpful if we started to translate them from a subjective field to an objective one. Since Canada intervened in Kosovo on a humanitarian basis, it would be interesting to know what criteria Canada used to come to that conclusion of humanitarian intervention. Perhaps those criteria would be instructive to the United Nations to begin to build an objective agenda.

**Senator Carstairs:** Honourable senators, in some ways it will have to be done — even by the United Nations — on a case-by-case basis. The Prime Minister was clear when he said that it would have to be a devastating situation. Clearly, a devastating situation needs some strong evidence that the people of a nation are being severely destroyed — not only in terms of their physical being but also in terms of their spiritual and moral well being. Those are issues that are certainly debatable and widely so.

Having said that, we know from our Rwanda experience that we did not respond early enough and that we must learn to do so more quickly.

#### ISRAEL—VOTE ON RESOLUTION TO HALT THREATS TO PRESIDENT OF PALESTINIAN COUNCIL

**Hon. Marcel Prud'homme:** Honourable senators, I was absent at the Banking Committee this morning because I attended a meeting with General Musharraf.

I was surprised — as were many friends of Canada who believe in the country's equilibrium — at the vote that took place last week at the United Nations concerning the demands that Israel not deport or threaten the safety of Yassar Arafat. The vote was 133 to 4, and there were 15 abstentions. The four against were the United States of America — even though Senator Grafstein might not like this to be mentioned — and Israel and their two new allies, the Federated States of Micronesia and Marshall Islands. That was no surprise to me.

• (1420)

What surprised me were the abstentions. For the first time, we did not vote as I was instructed to do by the late Prime Minister Trudeau when he appointed me to the United Nations: In case of doubt, vote in good company.

Am I right to say that the good company of Canada is now Tuvalu, Tonga, Nauru, Papua New Guinea, Fiji and — Australia, among others. All the others voted in favour.

I have a question for the Leader of the Government in the Senate, especially in view of the fact that today is the twenty-fifth anniversary of a cabinet decision in Israel to dismantle Jewish settlements on the Sinai Peninsula in return for a peace treaty with Egypt and to give Prime Minister Begin a strong show of support.

So the man had the courage to dismantle in return for a peace treaty.

To be frank, I am shocked by that vote. Honourable senators, as long as I live, I will preach equilibrium for Canadian policy, regardless of other people understanding or not understanding my true view. My views are Canadian views — nothing else. In June of this year, some of our colleagues published "A Proposal for a Canadian Position on Israel and the Middle East." That document is signed by one senator, Senator Kolber, and, from the House of Commons, Dr. Bennett, the Hon. Art Eggleton, Ms. Folco, Ms. Jennings, Ms. Neville, Hon. Jim Peterson and Mr. Volpe. Coincidentally, this document will be taken to pieces in a speech here in the Senate. They ask that we avoid Arafat and not recognize him.

I wish to draw a conclusion from reading this proposal — which I found on the Internet from Vancouver, by the way, and not from Ottawa — and from the fact that we abstained from voting last week. The Leader of the Government is doing an extremely good job here in this Senate, under great duress. I saw that yesterday. I want to be courteous to her. The government leader knows my views, but I am surprised at the new company of Canada in world affairs. Canada is now siding with these people in abstention, at a time when people are looking to Canada for guidance, including this morning with Mr. Musharraf. Canada, Canada, Canada! Everyone has their eyes on us, but we are losing slowly and gradually.

Could the honourable leader give me an explanation? I am patient. I can wait until next week. Would she be so kind as to inquire about the rationale of this new kind of vote, this new pattern, which was exercised last week at the United Nations to the shock and surprise of our own allies and friends, the entire European Economic Union which voted en bloc in favour of the resolution?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, let me assure the honourable senator that he should draw absolutely no conclusion between the document that he spoke about and the decision made by Canada to abstain on the vote last week.

In terms of why Canada abstained last week, I do not know the reasons for that. I shall seek to obtain them for the honourable senator.

**Senator Prud'homme:** I shall not ask a supplementary, because I trust the Leader of the Government will get an answer for me.

#### LIBRARY OF PARLIAMENT OFFICIAL LANGUAGES SCRUTINY OF REGULATIONS

#### STANDING JOINT COMMITTEES— MESSAGE FROM COMMONS

**The Hon. the Speaker:** Honourable senators, I have the honour to inform the Senate that a message has been received from the House of Commons to acquaint the Senate of the names of the members appointed to serve on behalf of the House on the Standing Joint Committees on the Library of Parliament, Official Languages, and Scrutiny of Regulations.



**Hon. Eymard G. Corbin:** I have a point of order concerning the presentation of the previous paper. There was mention of the Standing Joint Committee on Official Languages. To my knowledge, such a committee does not exist any more. The Senate has its own independent official languages committee.

**The Hon. the Speaker:** The honourable senator is correct on the Senate having a standing committee; I am just informed by the table. However, apparently, on paper, the joint committee exists even though we do not name members to the Standing Joint Committee on Official Languages.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I would like clarification as to what "on paper" means in parliamentary terms.

**The Hon. the Speaker:** Honourable senators, it is a shorthand way of describing that formal steps by Parliament have not been taken to eliminate the existence in name of a committee. I shall try to be more thorough in my descriptions.

## ORDERS OF THE DAY

### SPECIFIC CLAIMS RESOLUTION BILL

#### THIRD READING—MOTION IN AMENDMENT— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Robichaud, P.C., seconded by the Honourable Senator Rompkey, P.C., for the third reading of Bill C-6, to establish the Canadian Centre for the Independent Resolution of First Nations Specific Claims to provide for the filing, negotiation and resolution of specific claims and to make related amendments to other Acts, as amended,

And on the motion in amendment of the Honourable Senator Watt, seconded by the Honourable Senator Gill, that the Bill, as amended, be not now read a third time but that it be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

**Hon. A. Raynell Andreychuk:** Honourable senators, I wish to rise in the debate on Bill C-6, particularly with respect to the amendment moved by Senator Watt.

Bill C-6 proposes to establish the Canadian Centre for Independent Resolution of First Nations Specific Claims, as well as to amend other acts. It is a complex piece of proposed legislation. This new centre, which intends to provide a new legal procedure for the filing, negotiation and resolution of specific

claims, is being established within the parameters of our system because it sets up an actual system, which is expected to be an improvement on the ad hoc claims-resolution process that has hindered the self-government objectives of our First Nations people.

Honourable senators, I am unsure whether Bill C-6 will positively contribute to the lives of our First Nations people. However, I do know that it was an attempt by the government, in consultation with First Nations, to look at a different process, different from the one that appeared to be stalled.

I have only to listen to my colleagues here who are of First Nations background, and to other First Nations, that there are some difficulties with Bill C-6.

One can certainly understand that not all bills are perfect. A bill as complex as this one is sure to have difficulties. However, I believe it is our responsibility to ensure the proposed legislation is the best that we can produce. The Aboriginal committee has looked at Bill C-6 and the bill was reported to the chamber.

I have reviewed the evidence before the committee and the comments made on the floor of this chamber. One area that particularly concerns me is that of collective rights. We will, for the first time in my knowledge, in very formalized enabling legislation, namely Bill C-6, put a cap on the negotiations. A ceiling will be set on the amount that can be compensated to First Nations with respect to their land claims.

We are looking at collective rights. I want to be sure that the process introduced in this bill would not in any way jeopardize those who will be subject to it, as compared to others who have different means. In other words, Aboriginal people have rights that we cannot intrude on. If we negotiate fully and in an unfettered way, then the agreement should be binding. However, when the government, through a bill, puts limitations on that negotiation, I want to be sure that this is not an unfair disadvantage to those who will enter the agreement. Consequently, I was sympathetic in hearing that there would be an amendment so that the Standing Senate Committee on Legal and Constitutional Affairs could look at the ramifications of this bill.

• (1430)

The Departments of Justice and Indian Affairs and Northern Development have no doubt screened Bill C-6 and have monitored its passage through the House of Commons and on to the Senate. No doubt they believe it complies with the Constitution and that there are no impediments to its enactment. However, I have been persuaded that when officials of the Department of Justice come and give their best and fairest opinions, that is not the last of the situation. We often call neutral legal experts and those who represent opposing points of view to come and testify before the Legal and Constitutional Affairs Committee, and we find that there are fair and legal interpretations of bills that the Department of Justice does not support.

If we were to accept, as I believe has been suggested to this honourable chamber, that this legislation is sufficient for all cases, then we would not have the courts making the final determination and often opposing the government's position. In fact, as Senator Chalifoux pointed out recently, it is a shame that Aboriginal peoples have to seek their legitimate claims through the courts and could not come to an understanding with the federal government. I happen to support that point of view. We should make our best efforts to ensure that we hear from the best legal minds. We want to ensure that the legislation does in fact comply with the Aboriginal sections of our Constitution, with best practices in negotiations, and that in the end it will encompass the best policy decisions we can make both for Aboriginal peoples and for society at large.

However, since forming the opinion that the Standing Senate Committee on Legal and Constitutional Affairs would be the right place to have a second look at some of the legal ramifications, last Friday the Supreme Court of Canada ruled unanimously that a Metis community in Sault Ste. Marie, and more particularly one member of the Metis community, had the Aboriginal right to hunt for food. Until that point, only status Indians had been the subject matter in such a forceful way before our courts.

In my humble opinion, after reading the decision in *Powley* and reflecting on Bill C-6, I cannot come to the conclusion that the department and the minister have given full weight to this decision, because in fact Bill C-6 was established as government policy before the ruling in *Powley*. One can infer that they took due notice of Metis claims, but let me assure you that two of our senators, Senator Chalifoux and Senator Joyal, pointed out that this case is historic in giving full legitimacy to Metis people in a way that has not been done constitutionally in other cases before. Therefore, it is absolutely important that, in dispensing our fiduciary role, we give the department and the minister the opportunity to reflect on this case. They should come forward to reassure us that, in fact, there need not be further amendments or changes to the bill and that we will not be infringing on Metis rights when we place this bill on the books of the Parliament of Canada.

#### MOTION IN AMENDMENT

**Hon. A. Raynell Andreychuk:** Therefore, without going into great elaboration, I believe Metis issues must now be addressed regarding Bill C-6. Taking those issues into account, I move, seconded by Senator Stratton:

That the motion in amendment be amended by deleting all the words after the words "be not now read a third time" and substituting the following therefor:

"but that it be referred back to the Standing Senate Committee on Aboriginal Peoples for the purpose of studying the impact on Bill C-6 of the recent Supreme Court decision recognizing the Metis people as a distinct Aboriginal Nation."

**The Hon. the Speaker:** Senator Andreychuk has moved a sub-amendment. There is opportunity to speak to the sub-amendment and to put questions to her.

Do you wish to speak to the sub-amendment, Senator Carstairs?

**Hon. Sharon Carstairs (Leader of the Government):** Yes, I do wish to put a few comments on the record.

Honourable senators, if we were to consider such a sub-amendment, I would like some assurances from the chair of the committee and from the other side that the committee report this matter to the chamber no later than October 7; and, further, that this committee, in order to do justice to the idea set forth by Senator Andreychuk, be allowed to sit outside of its normal sitting times, including when the Senate is sitting, in order for it to hear all of the witnesses necessary. I would like to hear from the other side as to whether those provisions would be acceptable.

**The Hon. the Speaker:** I believe Senator Carstairs is raising a matter that falls under the general category of house business and relates to clarifying a matter usually handled by the deputy leaders and sometimes by the leaders. I will take my seat, having characterized her question that way.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** On behalf of the opposition, honourable senators, we would like to hear the arguments made either for this sub-amendment or against this sub-amendment. On the basis of what we learn from that discussion, it might be, as I think the Leader of the Government implied, a perfectly reasonable thing to do. I do not want to act in any a priori fashion. Her suggestion might be perfectly reasonable, but I would like to hear more discussion.

**The Hon. the Speaker:** I think this is a suggestion we can return to later. We are now dealing with Senator Andreychuk's sub-amendment. I believe Senator Sibbeston has a question.

• (1440)

**Hon. Nick G. Sibbeston:** I believe Senator Andreychuk stated that she is of the belief that the provisions in Bill C-6 somehow limit the ability of First Nations to make specific claims. Is the honourable senator of the belief that Bill C-6 in any way limits specific claims of First Nations?

**Senator Andreychuk:** I believe that Bill C-6 will directly limit Aboriginal claims in the sense that those claims will be within the ambit of the legislation.

While it is true that it is the prerogative of the claimants to move into a negotiation with the government, and therefore they have the ultimate say, I want to ensure that the process is fair and that we are not misleading Aboriginal groups into saying that this is better. Time will tell if it is better than the ad hoc process. We can only hope that it is better.

I cannot answer the question of the honourable senator. My concern is to ensure that the legal points have been completely canvassed and that Aboriginal people are treated properly.



When I canvassed the evidence, there were questions that I would have asked from a legal point of view had I been sitting in the committee. The problem was that the witnesses would not have been capable of answering those questions. That is why I thought the Standing Senate Committee on Legal and Constitutional Affairs, being used to calling legal experts, could do this job.

Honourable senators, my overwhelming concern is for Metis rights. We have here an unusual case that will be far-reaching, in my opinion. I may be wrong, but I have read and re-read the case, and I believe it will be far-reaching.

Who will make claims on behalf of Metis people? What structures do Metis people have? We know more about First Nations structures than we do about the Metis. Will there be overlapping claims to existing claims? We will give them an opportunity if put into the Constitution a definition of Aboriginal that includes the Metis. We have overwhelmingly dealt with issues of the Inuit and the Indian First Nations claims as opposed to the Metis.

This decision will give full weight to the Metis and is significant enough for us to stop and ask what the legal implications are, even to Bill C-6. If, upon reflection, we believe that Metis claims will not be impeded, then we can go ahead.

If there is some way that we can improve upon Bill C-6, now is the opportunity to do it, in light of the *Powley* decision.

**The Hon. the Speaker:** I should advise honourable senators that Senator Andreychuk's time has expired.

**Hon. Charlie Watt:** Honourable senators, it is an honour to support the motion of Senator Andreychuk to refer Bill C-6 back to the Standing Senate Committee on Aboriginal Peoples for a review of its important legal implications.

Honourable senators might recall that on June 19, 2003, I presented a motion to refer Bill C-6 to our Standing Senate Committee on Legal and Constitutional Affairs. I feel at ease with this step, as there are precedents for referral from one Senate committee to another.

Let me cite one example. On June 13, 2002, following a report from the Senate committee at third reading, a bill to amend the Food and Drugs Act with respect to clean drinking water was referred to the Standing Senate Committee on Legal and Constitutional Affairs. However, I now agree with those honourable senators who said that our Aboriginal Committee should review the issue of specific claims.

On June 19, 2003, I also tabled five series of amendments that were not recorded in the *Debates of the Senate*. Let us hope that will not happen again.

Today, I will table the same amendments, which I trust honourable senators will carefully consider, as these amendments affect the people most concerned, the First

Nations. First Nations peoples are the most concerned and will be the most adversely affected in this situation. Witnesses have told us why Bill C-6 is unworkable from an economic, social and political point of view.

Today I wish to focus on the legal implications of Bill C-6. The legal framework governing consideration of specific claims is changing rapidly. The framework is shrinking. In 2002, at a conference hosted by the AFN, our colleague Paul Martin compared the new nation-to-nation relationship to that of two canoes advancing side by side, in concert. Bill C-6 portrays the government canoe racing ahead, out of sight, and the Aboriginal canoe so far behind it can hardly be seen in the midst of legal uncertainty. It is in this disturbing context that I suggest that we briefly examine aspects of the legal framework.

It has been contended that there is no need for a non-derogation clause in Bill C-6 because such a provision would lead to legal uncertainty. A tribunal decision would not be final. In reality, the non-derogation clause would not concern rights put forward in one specific claim under review.

The purpose of a non-derogation clause in Bill C-6 would serve two purposes. First, such a clause would be designed to protect Aboriginal and treaty rights other than those under discussion in one specific claims resolution process. Second, it would serve to remind those adjudicating the existence of sections 25 and 35 of the Constitution Act, 1982. That is why I propose an amendment for a non-derogation clause at clause 2 of Bill C-6.

I shall now turn to the subject of consultation on appointments. In Bill C-6 there is no provision for consultation between the minister and the First Nation to appoint members of the commission and the tribunal.

During the hearings on Bill C-6, various precedents for Aboriginal involvement were presented. For example, the Aboriginal party and the Government of Nunavut appoint the majority of the members to the Nunavut Wildlife Board. In the context of specific claims, the minister closely consults with the Federation of Saskatchewan Indian Nations on the appointment of the Saskatchewan Treaty Commissioner.

The minister has given a commitment to consult, but what about the next minister? In the case of the Indian Claims Commission we have today, the AFN was not consulted on the appointment of the last chief commissioner. In order to avoid controversy for the minister in his or her use of discretionary power, honourable senators will want to consider the amendments I suggest to clauses 5, 20 and 41 of the bill.

• (1450)

With regard to delay, under the present system, the minister, in deploying excessive power, is not always rewarded for delay. A First Nation claimant could use what is called the "constructive rejection" argument. Very simply, after a long delay, the Indian Claims Commission has agreed to consider a claim because the minister's long delay meant the claim was, in fact, rejected.

Under Bill C-6, there is no provision for constructive rejection. This is why I propose an amendment to clause 26 of Bill C-6. If after a period of three years the minister has not specified a decision, he or she is deemed to have rejected a claim and the commission and tribunal can proceed.

I wonder if I can have some quiet here, please.

**The Hon. the Speaker:** Honourable senators, Senator Watt is correct. There are a number of conversations ongoing in the chamber and, out of respect for our colleague and those who wish to listen to him, I would ask that any conversations please take place beyond the bar.

**Senator Watt:** Thank you, Your Honour and honourable senators.

At clause 56 of Bill C-6, a financial cap of \$10 million per claim is set forth. There is simply no legal precedent for such a cap. When I negotiated the James Bay and Northern Quebec Agreement in the 1970s, there was no financial limit. The Indian Claims Commission now operates outside the confines of a financial cap. In recent years, two specific claim agreements for Saskatchewan bands, after Indian Claims Commission involvement, resulted in compensation of \$95 million and \$53 million.

The financial cap provision is a budget position. It has nothing to do with the legal realm and everything to do with damage control by the Treasury Board and the Department of Finance in Ottawa. This is why proposed amendments to clauses 2, 32, 35, 46, 51, 56, and 65 delete references to a financial cap.

For a specific claim to be admitted for consideration, Bill C-6 confines such consideration to "and land other assets." This is another example of the incredible shrinking legal framework.

In the past, definitions were much broader and included Aboriginal economic rights. For example, the Primrose Weapons Range, which spans parts of Alberta and Saskatchewan, gave rise to negotiations on compensation for lost hunting, fish and trapping rights. In one case alone, a band obtained compensation of \$12 million. This is why I propose an amendment to clause 26 to eliminate reference to land and other assets.

Honourable senators, in conclusion, we owe it to ourselves and to our institution to take a second look through the mist of legal uncertainty. If we want to avoid litigation and controversy, if we want to do justice to the First Nations, which enjoy a very unique constitutional position, we will have such a look.

**Senator Kinsella:** Would Senator Watt take a question?

**Senator Watt:** Yes.

**Senator Kinsella:** Would you share with us your view on the sub-amendment moved by Senator Andreychuk? Do you think that the Standing Senate Committee on Aboriginal Peoples would be able to conclude its work by October 7?

[ Senator Watt ]

**Senator Watt:** I believe that we would be able to do good work within the time frame suggested by Senator Carstairs, providing that there is flexibility in terms of scheduling the proper witnesses.

**Hon. Rose-Marie Losier-Cool (The Hon. the Acting Speaker):** Is the house ready for the question?

**Senator Carstairs:** We are not ready for the question. I would like to hear from the Leader of the Official Opposition, or the Deputy Leader, on the record, as to whether they agree that the committee should report back by October 7, and whether normal sitting times for committees are acceptable to them.

**Senator Kinsella:** Yes, we agree.

**The Hon. the Acting Speaker:** Is it your pleasure, honourable senators, to adopt the motion in amendment?

**Some Hon. Senators:** Yes.

**Some Hon. Senators:** No.

**The Hon. the Acting Speaker:** Will all those in favour of the motion in amendment of Senator Andreychuk please say "yea"?

**Some Hon. Senators:** Yea.

**The Hon. the Acting Speaker:** Will all those opposed to the motion in amendment please say "nay"?

**Some Hon. Senators:** Nay.

**The Hon. the Acting Speaker:** In my opinion, the "yeas" have it. I declare the motion in amendment carried.

Senator Kroft, do you wish to speak?

Is there unanimous consent to allow Senator Kroft to speak?

**An Hon. Senator:** No, we have voted.

[Translation]

## PUBLIC SERVICE MODERNIZATION BILL

### THIRD READING—MOTION IN AMENDMENT— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Harb, for the third reading of Bill C-25, An Act to modernize employment and labour relations in the public service and to amend the Financial Administration Act and the Canadian Centre for Management Development Act and to make consequential amendments to other Acts,



And on the motion in amendment of the Honourable Senator Murray, P.C., seconded by the Honourable Senator Oliver, that the Bill be not now read a third time but that it be amended in clause 12,

(a) on page 145, by replacing line 20, with the following:

“(5) The Governor in Council shall designate, after approval by resolution of the Senate and House of Commons,”; and

(b) on page 151, by replacing lines 20 to 31, with the following:

“110. (1) The Chairperson shall, as soon as possible after the end of each fiscal year, submit an annual report to Parliament on the activities of the Tribunal during that fiscal year.

(2) The Chairperson may, at any time, make a special report to Parliament referring to and commenting on any matter within the scope of the powers and functions of the Tribunal where, in the opinion of the Chairperson, the matter is of such urgency or importance that a report on it should not be deferred until the time provided for transmission of the next annual report of the Tribunal.”; and

(c) on page 168, by replacing line 11, with the following:

“(4) The Governor in Council shall designate, after approval by resolution of the Senate and House of Commons,”.

**Hon. Gerald J. Comeau:** Honourable senators, basically, Bill C-25 sounds the death knell of merit-based staffing in the public service. We have in Canada a professional, independent and non-partisan public service we can be proud of. Hiring and promotion in the federal public service are merit-based. The fact that your neighbour is a deputy minister or that you and the staffing agent both belong to the same social club or attend mass at the same church does not come into play. It is irrelevant.

When there is a vacancy to be filled, generally a competition is held. The qualifications of each candidate are assessed and the best qualified is offered the position. If he or she declines, the position is then offered to the next candidate on the list. Unfortunately, the bill interferes with the merit process by introducing a new approach called individual merit.

• (1500)

Managers will no longer be required to hire the candidate best qualified for a given position. They will be able to hire anyone who can perform the duties and change the statement of qualifications in such a way that only one candidate, the one they want, will meet the requirements. So, with only one runner in the race, guess who is going to win.

Political patronage has not been a factor in the staffing of most jobs in the public service for nearly 100 years. We could now have to deal with bureaucratic patronage. Is one better than the other? I say no.

In its brief to the Standing Committee on National Finance, the Professional Institute of the Public Service of Canada wrote, and I quote:

We fear the flexibility provided to deputy ministers under the new provisions and the limited scope of redress, will increase the incidence of bureaucratic patronage.

Given the wide discretionary power available to deputy heads, the institute said:

In short, if the deputy head were intent on hiring his brother-in-law and as long as his brother-in-law possessed the basic qualifications, there is ample opportunity to construct additional criteria specific to one candidate to conceal what otherwise would be a deviation from merit and an abuse of authority.

It is not me saying this, but some highly qualified people.

The brief by the Social Science Employees Association stated as follows:

This process makes it unlikely that a competition would be held comparing the qualities of the candidates and selecting the best.

They also indicated:

It is enough to find people meeting the minimal standards for knowledge and abilities. Why seek out excellence when it is more expeditious to seek mediocrity?

There is also the possibility of political abuse. If a minister really wants to push a candidate forward, a deputy minister would have a hard time making use of the process to thwart his superior's wishes.

Honourable senators, the Public Service Commission has always been the one to defend and monitor the staffing process. Not only does Bill C-25 weaken that process, it also strips the commission of some of its monitoring powers.

The commission will no longer be able to investigate appointments by delegation and to take remedial steps as required. That investigative function will be given to the deputy head.

The commission can audit the selection process, but has no authority to act if this becomes necessary.

That is why the commission wrote the following in a brief to the committee dated August 29, 2003:

...under Bill C-25, the commission has a diminished capacity to check for bureaucratic patronage and the system's effectiveness will depend on the behaviour of the deputy heads.

Honourable senators, not only will it be easier for deputy heads to hire the candidate of their choice, it will also be easier for them to prevent anyone who is not in their good graces from getting a promotion.

If a deputy head does not appreciate being questioned about his \$300 meals by a financial officer in his department, then he can simply disregard that person's qualifications when it comes time for promotion.

The government does not want to hear about protective measures for whistle-blowers, and on top of that, it is eliminating any guarantee of fairness in competitions.

Career public servants will think twice before making allegations of reprehensible conduct. If they do not get fired first, it will be nearly impossible for them to get a promotion.

This bill simply does not contain enough protective measures to prevent abusive behaviour.

Nycole Turmel, National President of the Public Service Alliance of Canada, noted in her presentation to the National Finance Committee, and I quote:

There is a link between our concerns about the changes to the merit principle and the appeal process. If direct managers now have increased influence over employees' careers and the appeal rights are too narrow, can we really expect public service employees to come forward with allegations of wrongdoings?

We still recognize the need for a less cumbersome staffing process. However, by watering down the merit principle, delegating staffing authority to the lowest management levels and restricting recourse, we fear Bill C-25 will lead to favouritism.

She continues as follows:

While most managers are honest and respect the rules, a recent audit of the federal student work experience program shows that, given the chance, a significant number of them will circumvent the rules to hire friends and family.

Honourable senators, one of the safeguards is the right of unsuccessful candidates to appeal the outcome of a competition.

But as I said previously, managers can get around the rules in such a way as to retain only one applicant for a position. If there are no other applicants, there is no appeal to the staffing action.

Jacque de Aguayo, Legal Officer with the Public Service Alliance of Canada, told the committee, and I quote:

However, if the legislation itself states clearly that a manager need only consider one individual for the job, I ask you how anyone will be able to show that there was an abuse of authority. It is perfectly acceptable under this legislation to only consider one individual for the appointment.

[ Senator Comeau ]

She continued:

An employee who comes forward to his manager and says, "I think there is some wrongdoing going on over there," must not suddenly find himself not getting acting assignments to higher positions, interesting work or being considered for appointment positions.

We are very concerned that the definition of "merit," the changes to the appeal process and the limit of the appeal right to an abuse of authority will cause it to be more difficult for employees to challenge what is happening within the public service, whether it be staffing or wrongdoing. By doing that, we do not serve transparency very well. That is where PSAC's concerns lie.

Honourable senators, we must amend this bill so that relative merit becomes the rule once again, while providing regulatory power to make certain exceptions, as has been done for many years.

For these reasons, I move that Bill C-25 be not now read the third time.

[English]

**Hon. Joseph A. Day:** Honourable senators, I understand that what we are dealing with and what this chamber is seized with at this time is the amendment of Senator Murray. Now, the honourable senator is proposing another separate amendment, which I believe is out of order at this time.

**Senator Comeau:** The honourable senator is referring to Senator Murray's amendment, which dealt with the tribunal. As he may have noted, throughout my speech I referred to the question of being able to access the tribunal and the reduction of the number of times that people will be able to access the tribunal. In fact, my amendment deals directly with Senator Murray's amendment.

**The Hon. the Acting Speaker:** It is a sub-amendment.

• (1510)

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** I heard a point of order raised by Senator Day. There is no point of order here. The Chair should rule.

**The Hon. the Acting Speaker:** I was waiting for Senator Comeau to say it was a sub-amendment to Senator Murray's amendment.

**Hon. Anne C. Cools:** I was about to support the point. I think Senator Day is very well intentioned. It is in order to move sub-amendments.

[Translation]

MOTION IN AMENDMENT

**Hon. Gerald J. Comeau:** I move:

That Bill C-25 be not now read a third time but that it be amended in clause 12, on page 126, by replacing lines 8 to 12 with the following:



"30. (1) Appointments by the Commission to or from within the public service shall be free from political influence and shall be made on the basis of merit by competition or by such other process of personnel selection designed to establish the relative merit of candidates as the Commission considers is in the best interests of the public service.

(1.1) Despite subsection (1), an appointment may be made on the basis of individual merit in the circumstances prescribed by the regulations of the Commission.

(2) An appointment is made on the basis of individual".

[English]

**The Hon. the Acting Speaker:** As a sub-amendment to the motion by Senator Murray, it was moved by the Honourable Senator Comeau, seconded by the Honourable Senator Kinsella:

That Bill C-25 be not now read a third time but that it be amended in clause 12, on page 126, by replacing lines 8 to 12 with the following:

"30. (1) Appointments by the Commission to or from within the public service shall be free from political influence and shall be made on the basis of merit by competition or by such other process of personnel selection designed to establish the relative merit of candidates as the Commission considers is in the best interests of the public service.

(1.1) Despite subsection (1), an appointment may be made on the basis of individual merit in the circumstances prescribed by the regulations of the Commission.

(2) An appointment is made on the basis of individual".

[Translation]

On the sub-amendment.

[English]

**Hon. Anne C. Cools:** Your Honour, I rise on a point of order.

I have not reviewed the document in front of me, but what you just read did not seem to be an amendment to the amendment. It did not seem to be a sub-amendment. At first blush, it seemed to me to be an amendment to that amendment. In other words, it has to be an amendment to the main motion. Perhaps Your Honour could clarify what it is.

My clear understanding was that Senator Comeau was speaking to the amendment. If he wants to move a further amendment, it has to be an amendment to that amendment. In other words, it has to be a sub-amendment. If he wanted to move an amendment to the main motion, he would have to wait for the amendment to be disposed of and voted on. We would then return to the main motion, at which point he would be able to move another amendment to the main motion.

I am seeking clarification. When I spoke a moment ago, I was of the opinion that he was moving an amendment to the amendment. In other words, he was moving a sub-amendment. It is not a sub-amendment based on what I am hearing, Your Honour. It is an amendment to the main motion.

Perhaps Her Honour could look at that. Perhaps some other senators may wish to speak on that.

**The Hon. the Acting Speaker:** Senator Comeau moved it as a sub-amendment.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** My argument is that, indeed, it is a sub-amendment.

If honourable senators and the Chair look at the motion in amendment, you will see at its second paragraph it provides as follows:

...that the Bill be not now read a third time but that it be amended in clause 12...

Thus, the motion in amendment is saying that the bill ought not to be read a third time now, but certain amendments speaking to the issue of the tribunal be amended.

Senator Comeau's amendment picks up at the same point and says, yes, and it should be further amended to provide for the merit principle.

The substantive argument as to why the two are connected is because most of the cases that the tribunal will be hearing will be relating to the question of merit. Therefore, the sub-amendment is perfectly related to the main amendment, all of which is flowing from the bill not being read a third time now but that it be amended. This sub-amendment to the amendment is perfectly in order.

[Translation]

**Hon. Jean-Robert Gauthier:** Honourable senators, I am somewhat troubled by the so-called sub-amendment. Senator Murray's amendment concerns the tribunal. Senator Comeau's arguments relate, instead, to the commission and the application of the merit principle.

Senators will remember that, under Bill C-25, the Public Service Commission is responsible for internal and external appointments. The tribunal has no jurisdiction over external appointments, only internal appointments. Supposedly, once a candidate has gone through the external appointment process, everything depends on the commission. How can we amend an amendment relating to the tribunal with an amendment concerning the commission?

Well, it is obvious that this will lead to further confusion. There will be two authorities responsible for this system; one called the "Tribunal" and the other the "Commission." This bothers me.

I do not see how Senator Comeau's sub-amendment, which deals with two different things, can be tacked on to Senator Murray's amendment. It is the same system, except that it is applied differently.

[English]

**Senator Cools:** Honourable senators, I concur with Senator Gauthier.

I now have both proposals in my hand. Clearly, they are both amending clause 12, but different parts of clause 12.

Honourable senators, if the truth be known, clause 12 of this bill is enormous. Clause 12 is an act in itself.

In actual fact, Senator Comeau's amendment is not amending Senator Murray's amendment. It is a different amendment. It is unrelated. It really is an amendment to the main motion. It may be in order at a later point in the proceeding, but I do not think it is in order now. What is before the chamber now is Senator Murray's amendment. Senator Comeau is free to move an amendment to Senator Murray's amendment, but he cannot move an additional and different proposal from what is already before us.

**Senator Kinsella:** Honourable senators, in the arguments advanced by both honourable senators to sustain this rather spurious position that this sub-amendment is out of order, neither has cited a rule of the Senate, nor any of the arbitral literature.

• (1520)

When the Speaker goes to study this matter, it will be incumbent upon us to understand, because this is very important, that we will be calling upon the Chair to delve into the substance of amendments and to make a ruling based upon the Chair's interpretation of the substance of an amendment. There would have to be a very specific rule to delineate that practice, or some pretty heavy support in parliamentary precedent.

[Translation]

**Hon. Fernand Robichaud (Deputy Leader of the Government):** I would simply ask that the Honourable the Acting Speaker advise us as to whether the amendment put forward by Senator Comeau is indeed a sub-amendment to the amendment before us and, therefore, if we could follow the procedure and ensure that Senator Comeau's amendment is a sub-amendment. Otherwise, we could address it once we have disposed of the amendment currently before us.

**The Hon. the Acting Speaker:** When I declared the amendment in order, I did so on the basis that Senator Comeau had presented it as a sub-amendment to the amendment put forward by Senator Murray. Senator Gauthier made a clear distinction between the

two issues, but now that I have taken a closer look, I realize that it is a different amendment, a different item, so to speak, because it deals with the Public Service Commission, and then the Public Service Tribunal.

I think that we could consider it at this time.

[English]

**The Hon. the Acting Speaker:** Honourable senators, are you ready for Senator Murray's amendment?

**An Hon. Senator:** No.

**Senator Kinsella:** We are debating Senator Comeau's.

**Hon. Joseph A. Day:** Honourable senators, I am proposing at this stage, with the direction of Her Honour, to deal with Senator Murray's proposed amendment to the bill that is before you. For your recollection, honourable senators, Senator Murray's proposed amendment deals with the question of the tribunal and whether it should be more an agent of Parliament. That is the way he introduced his amendment, namely, by suggesting two areas of changes. One was with respect to the appointment. In that regard, with respect to the appointment of the president of the tribunal, the amendment reads:

The Governor in Council shall designate, after approval by resolution of the Senate and the House of Commons...

The purpose there is to bring the tribunal closer to being an agent of this house and the other place. The amendment also deals with the aspect of direct reporting.

Honourable senators, under Bill C-25, the public service staffing tribunal — which is the subject matter of this amendment — is created and the Public Service Labour Relations Board — which deals with organized labour grievances issues — is continued. The Public Service Commission is also continued in this legislation. I am hopeful that honourable senators are able to distinguish between the Public Service Commission, the public service staffing tribunal and the other board, which deals with labour relations matters.

For honourable senators' recollection, the Public Service Commission is a very unique institution, administering executive functions such as recruitment while reporting to Parliament through a designated minister. Currently, the Public Service Commission's staffing appeals is an adjudicative function, performed not by commissioners but by appeal officers. It is that appeal process that is being taken from the commission and put into the public service staffing tribunal, so that it will be independent of the Public Service Commission.

The entire theory and theme of this proposed legislation is to bring the Public Service Commission into the role of overseer — that is, the appointing agent, but delegating the appointing functions for staff down to the various ministers and ministries, to ensure that those functions are done properly.

[ Senator Gauthier ]



As I mentioned during my speech on this particular matter, the theme is to let the managers manage and then put some checks and balances in there to ensure that they are managing properly. That is the role of the Public Service Commission. Under this proposed legislation, therefore, the Public Service Commission will move closer to being an agent of Parliament. For that reason, the amendments with respect to the Public Service Commission that gave a role by resolution of the two Houses of Parliament in relation to the appointment of the commissioner make some sense.

However, the public service staffing tribunal will only deal, as Senator Gauthier has pointed out, with internal appointments and complaints with respect to staffing within the public service — for example, with individuals who feel they did not get the appointment they wanted, or with individuals who feel they were not being treated properly, or where there was an abuse by the manager. That is the role of the public service staffing tribunal. The tribunal, therefore, does not in any way have the character of an agent of Parliament. It will be a tribunal like many other tribunals we have performing quasi-judicial functions, like the CRTC. There are many of them.

The appointment of the commissioner or the president of the tribunal is provided for by the Prime Minister and cabinet or by the Governor in Council. The reporting function is through a designated minister.

Honourable senators, to accept this amendment would be to create a precedent that would be contrary to the established practice with respect to tribunals and thus be unnecessary, in my submission, and undesirable. I would respectfully request your support in voting against this particular amendment.

**An Hon. Senator:** Shame!

**An Hon. Senator:** Question!

**The Hon. the Speaker:** I am hearing a request that the question be put on Senator Murray's amendment. Is the house ready for the question?

It was moved by the Honourable Senator Murray, seconded by the Honourable Senator Oliver, that the bill be not now read a third time but it be amended, in clause 12 (a), on page 145 —

**An Hon. Senator:** Dispense!

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion in amendment?

**Some Hon. Senators:** Yes.

**Some Hon. Senators:** No.

**The Hon. the Speaker:** I will put the question in a formal way, not being able to determine from the voices whether the nays or the yeas have it.

Would those honourable senators in favour of the motion in amendment please say "yea"?

**Some Hon. Senators:** Yea.

**The Hon. the Speaker:** Will those honourable senators opposed to the motion in amendment please say "nay"?

**Some Hon. Senators:** Nay.

**The Hon. the Speaker:** I believe the "nays" have it.

*And two honourable senators having risen:*

**The Hon. The Speaker:** Call in the senators.

**Hon. Terry Stratton:** Your Honour, I would suggest that we have the vote at the next sitting of the Senate or tomorrow.

**Hon. Bill Rompkey:** Your Honour, I would propose Tuesday afternoon at 3:30, with a half-hour bell.

**The Hon. the Speaker:** Senator Rompkey has suggested we have the vote on Tuesday, at 3:30 p.m..

**Senator Stratton:** That is agreeable. Those senators who are arriving by air will be here by that time.

• (1530)

**The Hon. the Speaker:** As our rules provide, the whips have reached agreement that the vote on the motion in amendment of Senator Murray to Bill C-25 will be held at 3:30 p.m. next Tuesday. The bells will ring at three o'clock. Is that agreed, honourable senators?

**Hon. Senators:** Agreed.

Vote deferred.

## CRIMINAL CODE

### BILL TO AMEND—SECOND READING— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Joyal, P.C., seconded by the Honourable Senator Mahovlich, for the second reading of Bill C-250, to amend the Criminal Code (hate propaganda).—(*Honourable Senator Kinsella*).

**Hon. Terry Stratton:** Honourable senators, I should like to inform the chamber that Senator Kinsella has completed his intervention.

**Hon. Donald H. Oliver:** Honourable senators, I wish to join in this debate. I do not have formal remarks prepared, but I have read Bill C-250. I begin by commending Senator Joyal on the excellence of his presentation and the thoroughness of his presentation.

I join in this debate because it arises from a subject matter on which I have spoken in this chamber before. I remind honourable senators that, more than a year ago, I rose in this chamber and reported that on Sunday, June 7, James Byrd, Jr., a 49-year-old father of three, was abducted in Jasper, Texas, by three white men. He was beaten until he was unconscious, chained to the back of a pickup truck and dragged three miles to his death. James Byrd was killed for no other reason than the colour of his skin.

As reprehensible, inconceivable, shocking and brutal as that act was, it is not an isolated incident. There have been two additional copycat cases since his death.

While this barbaric act occurred in the United States, Canadians should not be complacent to think that hate crimes are confined to our neighbour to the south. Canada is not immune from hate crimes and acts of discrimination.

A number of statistics point to similar problems in Canada. My office dug up a few more statistics in relation to matters that deal with sexual orientation, which is the subject matter of Bill C-250, clause 4. For example, anti-gay and anti-lesbian incidents increased 8 per cent from 1999 to 2000. Serious injury resulting from these incidents decreased by 41 per cent. In 1999, in the United States, the Federal Bureau of Investigation reported that there were 1,317 incidents of violence based on sexual orientation. Of those, anti-male homosexuality violence characterized 69 per cent of the incidents. Approximately half of the perpetrators were aged 21 or younger.

A campus survey reported that 61 per cent of gay-lesbian respondents feared for their safety as their orientation would be used as reasons for violence.

We have statistics as well from Toronto. We wanted to determine what kind of assaults had been reported on what is known as the lesbian-gay hotline in Toronto from 1990 to 1995. Table 18 of that report shows that, of the assaults reported, 36 per cent, or 175, were verbal and physical; of verbal harassment, 136, or 30 per cent; of threatening assaults, 72 incidents; of physical assaults, 51 incidents, or 10 per cent; of vandalism and theft, 43 incidents, or 9 per cent; of sexual assault, 10 incidents. The number of hate crimes in Toronto in a one-year period, including mischief, assault, threats, mischief-over, bomb threats, robbery, break and enter, and others, was 155.

Those statistics, honourable senators, show us that there is in fact a need for new and enhanced and better legislation in Canada to ensure all Canadians receive the protection that was originally designed to cover them in the section that talked about public being distinguished by colour, race, religion, ethnic origin and the importance of increasing and adding sexual orientation.

For those reasons, honourable senators, I do support this legislation.

[ Senator Oliver ]

**Hon. Laurier L. LaPierre:** Honourable senators, it will not be surprising that as a gay man I support this legislation. I am a gay man who has in the past suffered abuse and beatings of various kinds in the name of various deities and of social arrangements.

Consequently, when Svend Robinson introduced this legislation in the other House, I was extremely happy. I warned him at the time that we had to be careful about religious texts and religions not being implicated in this bill in any way, shape or form. I did that only for the political way, in a sense, because I have absolutely no doubt that many religious texts create an atmosphere of disdain, an atmosphere of violence by name-calling, by descriptions of the homosexual reality as being an abomination and God knows what else. Consequently, I favour that these texts not be touched because they probably will die of their own dead weight.

I am interested in this issue not so much for me. I am 73 years old. I live with a magnificent man and I am not about to be abused in any way, shape or form. However, I am concerned about the young people of my country who are gay. I remind honourable senators that Ms. Bradshaw discovered in 1999 and she saw again last summer that the streets of many cities are populated with young people who have been thrown out of their homes because they are gay or lesbian. They now live on the streets. They sell their bodies and they suffer abuse and threats because, in the final analysis, their society as a whole, for far too long, has been permeated by a feeling that being gay was essentially a licence to be beaten up, to be abused, to be ostracized.

I would also remind senators that almost one third of the young men who kill themselves do so largely because they have been called queers and faggots in their schools; they have been ostracized and they become totally and completely disoriented, saddened and frightened of the world in which they live. They cannot find their place in the world. I also remind my colleagues that the greatest abuse in our schools — verbal and violent abuse — most often begins with the word “faggot.”

I do not expect boys and young children to be brought to court because of this bill, but I look at it as I look at same-sex marriage. I look at this bill as crossing the bar. In other words, this bill is stating clearly and irrevocably that we, as a society of free people, we who are blessed with our great Charter of Rights and Freedoms, will not allow anyone to be minimized in dignity because of his sexual orientation, his colour, his language, his religion or anything else for that matter. Consequently, I beg of you, let us deal with this bill as quickly as possible.

• (1540)

Let us send it back to the House of Commons, or wherever it is we need to send it, so that we will be able, within the next two or three weeks, to have, through the length of the country, a statement of freedom, of liberty and of equality.



[Translation]

**Hon. Jean-Robert Gauthier:** Honourable senators, I will be brief. I am impressed. Looking after minorities is our primary function in the Senate, after representing as best we can the regions of Canada. It is important that we share with other senators about these regional differences.

The issue of minorities is of great interest to me, and I am not talking about linguistic minorities only, but minorities in general, whether the difference comes from colour, language or tradition. We must be able to take a serious look at this issue in this place. I also wish to congratulate Senator Joyal on his speech yesterday. It was a gem. I am not a lawyer, but I was impressed. He quoted Lord Sankey in particular. I have lost track of how often I have used this quote from him. I will repeat it once again, because it is essential:

...it is important to keep in mind that the preservation of the rights of minorities was a condition on which such minorities entered into the federation, and the foundation upon which the whole structure was subsequently erected.

That is Canada. That is what the Fathers of Confederation did. We must understand that the Senate plays an important role. How many times have we heard it said: "We are stuck with the Senate." No, the Senate has an important role to play, if only to take care of the problems of minorities and regions. The country is vast, and, as was said a long time ago, we have a lot of geography and not much history. We are still writing it. I am pleased to support Bill C-250. It is another step in the right direction.

On motion of Senator Stratton, debate adjourned.

### LIBRARY OF PARLIAMENT SCRUTINY OF REGULATIONS

#### MESSAGE FROM COMMONS—MEMBERSHIP ON STANDING JOINT COMMITTEES

**The Hon. the Acting Speaker:** Honourable senators, I would like to point out that the message His Honour the Speaker read out earlier today, about members of parliament sitting on standing joint committees, applies only to the Joint Committees on the Library of Parliament and Scrutiny of Regulations, and not the Official Languages Committee. There was a mistake on the card the Speaker read from.

[English]

### STUDY ON MATTERS RELATING TO STRADDLING STOCKS AND TO FISH HABITAT

#### REPORT OF FISHERIES AND OCEANS COMMITTEE ADOPTED

On the Order:

Resuming debate on the consideration of the third report of the Standing Senate Committee on Fisheries and Oceans (study on matters relating to straddling stocks and to fish habitat) presented in the Senate on March 27, 2003.—(Honourable Senator Rompey, P.C.).

**Hon. Gerald J. Comeau** moved the adoption of this report.

Motion agreed to and report adopted.

[Translation]

### STUDY ON NEED FOR NATIONAL SECURITY POLICY

#### REPORT OF NATIONAL SECURITY AND DEFENCE COMMITTEE—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Kenny, seconded by the Honourable Senator Losier-Cool, for the adoption of the Second Report (Interim) of the Standing Senate Committee on National Security and Defence, entitled: *For an Extra 130 Bucks... Update on Canada's Military Financial Crisis, A View from the Bottom Up*, deposited with the Clerk of the Senate on November 12, 2002.—(Honourable Senator Robichaud, P.C.).

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, thank you for giving me the opportunity to conclude my remarks on the interim report of the National Security and Defence Committee. I was just about to discuss the government's last budget.

The 2003 budget recognizes that the Department of National Defence needs an immediate injection of almost \$170 million and an annual supplement of close to \$1 billion for the years to come. If the recommendations in today's report had been followed, the total increase in spending by the government for 2003-04 would have gone exclusively to National Defence.

Unfortunately, many governmental priorities would have suffered. In its wisdom, the government managed to improve certain social measures that are important for Canadians. You probably know about the success of the National Child Benefit; it is a program that offers important support to low-income families and is the result of a partnership between the federal, provincial and territorial governments. The last budget earmarked an annual \$965 million increase to the National Child Benefit until 2007. All these efforts have a single goal: to reduce child poverty.

What can we say about the \$900 million over five years that the federal government committed to investing as of this year under the Canada Health and Social Transfer. These measures will support day care initiatives and promote early learning. In its most recent budget, the government also introduced tax credits to help people with disabilities and their caregivers. It announced provisions to support parents and spouses who want to take care of their loved ones suffering from terminal illnesses. The government also increased its contribution in health care following the agreements negotiated with the provinces and territories.

I am mentioning only a few of the social measures introduced in the latest budget. The government decided to introduce a balanced budget, while paying down the debt and investing in areas that require urgent attention. This despite the fact that, in preparing its budget, the government was faced with a demand that greatly exceeded the funds available.

Honourable senators, you will doubtless agree that the government must review its priorities, change them if necessary and make choices. I believe that the government has chosen wisely and well. I believe that, if it is about choosing between purchasing military equipment or investing in initiatives to reduce child poverty and to support education and health programs, we must clearly support those social measures that reflect our values as a society.

Honourable senators, imagine the impact of another \$2 billion or \$3 billion on child poverty! Investing in the future of children means investing in this country's social infrastructure; it means supporting low-income families; it means giving a well-deserved hand to all the single parents who want a better future for their children.

• (1550)

Imagine how relieved people would be if they had even more time to be with relatives who were terminally ill.

Imagine if \$2 billion or \$3 billion more was injected into health care!

As for the Canadian Forces, honourable senators, imagine a salary increase for the lowest ranks!

Imagine, also, more resources for support programs for the families of members of the Canadian Forces and for quarters for the military. Honourable senators, I have to say that I firmly believe that our military and their families must be very well prepared to deal with their role as peacekeepers. They must be trained to deal with the total sense of disorientation that awaits them when they arrive wherever their mission takes them. They must also be prepared for their return and their reintegration into their families, after the horrendous experiences they may have gone through in armed conflicts and as peacekeepers. In this respect, their families need as much preparation and support as they do. Such measures would improve the quality of our Canadian Forces personnel. Honourable senators, I am talking about a service for military personnel being sent on missions.

Of course, this needs to be said, and as you can imagine, although the Canadian Forces are essential to the security and sovereignty of our country, they are not and must not be the government's only priority. The government acted cautiously and considered the needs of the population as a whole and of all our institutions.

Over the past decade, we must recognize that many have taken an alarmist attitude vis-à-vis the funding of the Canadian Forces.

Several interest groups and retired senior officers have made a national crisis out of the underfunding of the Canadian Forces and its impact on national security.

All these representations were made while budget consultations were taking place, and at a time when the government was working on reducing the deficit and had actually started to run budget surpluses.

Needless to say, and you will agree with me, that if you repeat the message long and hard enough, everyone will eventually believe it and, in this instance, believe specifically that the main problem facing the Canadian Forces is one of underfunding.

As recently as April 23, 2003, in an article published in *La Presse*, military history professor Richard Carrier wrote that, by regularly speaking out about the Canadian Forces, critics have managed to convince the Canadian public that underfunding was the main problem of our armed forces.

In my humble opinion, this second interim report of the Senate committee reflects this alarmist attitude and approach, which consists in condemning the government. This is the problem I have with this report. This is an alarmist attitude which seems to be saying that unless every last billion of the surplus is invested in the arms industry and the defence industry, the sky is going to fall!

I find much more serene the attitude taken by the Minister of National Defence when he stated before the Subcommittee on Veterans Affairs:

...in respect of the budget... this increase [in Budget 2003] does not mean that we can sit back and relax. ... Military organizations throughout the world are required to make major adjustments to this dramatically different situation, not to mention the rapid changes in technology.

We will be husbanding our resources, reallocating and shifting from low-priority areas to high-priority areas. We will be entering a period of transformation and making difficult decisions to take our military into the world in which we live.

This statement by the minister foreshadows a new era in terms of security and national defence, and makes us wonder if this has become nothing more than a question of money.

Honourable senators, even if we were to invest another \$20 billion in National Defence, nothing would guarantee our invincibility in the face of international terrorism.

Perhaps the Canadian Forces should be transformed as the minister suggests. Look at what they were, what they are, and where they want to go.



Personally, I am convinced that government budgets will be more useful to the entire population of Canada if they are invested in social programs, health, income security, education, transportation and research than if they are massively invested in the military.

I also think that Canada wants to continue, through regional and international institutions, to work toward maintaining peace and security in the world.

Honourable senators, I see that my time is up. I have expressed my reservations on this report. I cannot support adoption of this report.

On motion of Senator Robichaud, for Senator Pépin, debate adjourned.

### ACADIAN YEAR 2004

#### MOTION REQUESTING GOVERNMENT RECOGNITION ADOPTED

On the Order:

Resuming debate on the motion of the Honourable Senator Losier-Cool, seconded by the Honourable Senator Joyal, P.C.:

That the Senate of Canada recommends that the Government of Canada recognize the year 2004 as the Acadian Year.—(*Honourable Senator Comeau*).

**Hon. Gerald G. Comeau:** Honourable senators, I strongly support the motion. I would like to read you a letter that I wrote to the Prime Minister on September 23, 2003, in support of the motion.

Dear Mr. Prime Minister,

I hereby wish to support the request of the Société nationale de l'Acadie requesting that the Government of Canada officially declare 2004 to be Acadian Year.

Such a declaration by the federal government would be a remarkable contribution to the celebrations of the 400th anniversary of Acadia and in a way would crown the recent recognition of Bill S-5 by the Parliament of Canada. Acadian Year would represent a very important step for Acadia, which, from generation to generation, has played a significant role in the evolution of our country, particularly by enriching our cultural diversity and contributing to the spread of the French language. This culture has contributed to enhancing Canada's reputation, since it is now known and celebrated throughout all French-speaking countries.

The third international assembly of Acadians, which will take place in Nova Scotia in 2004, will display the cultural, economic and social vitality of Acadians within Canadian society. And thanks to Canada, an Acadian remains an Acadian wherever he or she lives in our wonderful country.

I attach great importance to this request, and I hope you will be able to support Acadian Year.

Thank you in advance for your kind attention.

Yours sincerely

• (1600)

I eagerly await the Prime Minister's response to recognizing the year 2004 as Acadian Year. I invite you to join the celebrations in Acadia and Nova Scotia in 2004.

[*English*]

**The Hon. the Acting Speaker:** It was moved by the Honourable Senator Losier-Cool seconded by the Honourable Senator Joyal:

That the Senate of Canada recommends that the Government of Canada recognize the year 2004 as the Acadian Year.

Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

**Hon. John Lynch-Staunton (Deputy Leader of the Opposition):** Honourable senators, I rise on a point of order. It is totally improper for the Acting Speaker to move this motion. I would hope that we could eliminate that from the transcript and have another mover, or perhaps the Acting Speaker would like to leave the Chair and move the motion from her seat. However, she cannot do it from the Speaker's Chair.

[*Translation*]

**Hon. Fernand Robichaud (Deputy Leader of the Government):** I understand the point our colleague, the Leader of the Opposition, is making. This motion was already put forward when someone else was acting as Speaker of the Senate. We were simply continuing the debate and Her Honour repeated the motion as it was set out in the Order Paper. I understand the concern of my honourable colleague. This could raise certain questions with regard to procedure and to whether procedure was followed to the letter.

**The Hon. the Acting Speaker:** Honourable senators, would you rather that I go back to my seat?

Are the honourable senators ready for the question?

**Some Hon. Senators:** Yes.

**The Hon. the Acting Speaker:** The Honourable Senator Losier-Cool, seconded by the Honourable Senator Joyal, moved that the Government of Canada recognize the year 2004 as the Acadian Year.

Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to.

**Some Hon. Senators:** Hear, hear!

**Senator Robichaud:** I just wonder whether we voted twice on the same motion.

## NATIONAL SECURITY AND DEFENCE

### MOTION TO AUTHORIZE COMMITTEE TO MEET DURING ADJOURNMENT OF THE SENATE WITHDRAWN

On the Order:

Resuming debate on the motion, as modified, of the Honourable Senator Kenny, seconded by the Honourable Senator Losier-Cool:

That the Standing Senate Committee on National Security and Defence be empowered, in accordance with Rule 95(3)(a), to sit during the summer adjournment, even though the Senate may then be adjourned for a period exceeding one week, until such time as the Senate returns in September of 2003.—(*Honourable Senator Lynch-Staunton*).

**Hon. Marcel Prud'homme:** Honourable senators, I think that Senator Lynch-Staunton, and the other honourable senators, would agree that Motion No. 121 be withdrawn from the Order Paper, since the date has now gone by.

Motion withdrawn.

### MOTION TO AUTHORIZE COMMITTEE TO DEPOSIT INTERIM REPORTS WITH THE CLERK OF THE SENATE WITHDRAWN

On the Order:

Resuming debate on the motion of the Honourable Senator Kenny, seconded by the Honourable Senator Moore:

That the Standing Senate Committee on National Security and Defence be permitted, notwithstanding usual practices, to deposit such interim reports that it may have ready during the adjournment, and that the reports be deemed to have been tabled in the Chamber.—(*Honourable Senator Robichaud, P.C.*).

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I think that Motion No. 122 could be withdrawn from the Order Paper.

Motion withdrawn.

## LEGACY OF WASTE DURING CHRÉTIEN-MARTIN YEARS

### INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator LeBreton calling the attention of the Senate to the legacy of waste during the Martin-Chrétien years.—(*Honourable Senator Eyton*).

**Hon. Jean-Claude Rivest:** Honourable senators, I want to make a number of comments on the motion brought forward by my

colleague Senator LeBreton, who is seeking to draw the attention of the Senate to the legacy of waste during the Martin-Chrétien years.

I do not want to give the impression, by speaking, that the Martin-Chrétien years were only bad years for Canada and that only bad decisions were made.

Honourable senators, certainly there were one or two good decisions made during all these years. Decisions that proved to be in the government's interest. I do not want my comments to be negative. I do not want my colleagues to interpret my words as negative, pessimistic and disparaging of the contribution that Mr. Chrétien and Mr. Martin made to Canadian politics.

I do have some admiration, definitely, for the Liberal Party of Canada. This morning, I read in the newspaper that, in Quebec, the Liberal Party of Canada has hired the Cirque du Soleil, which is the epitome of Quebec's *savoir faire*, to perform during the festivities marking the departure of the Right Honourable Prime Minister, Jean Chrétien. How fitting!

Canadians will remember just how flexible the Prime Minister, Mr. Chrétien, became after his election; really, he was just about as good as any of the contortionists at the Cirque du Soleil.

Remember that he campaigned against the famous GST, exploiting Canada's financial problems and the decision of the Mulroney government to introduce a tax. It is easy for a political party to criticize.

When Mr. Chrétien took office, he became an advocate of the GST. Ethically and politically, I wonder how a government can get itself elected, tell the public that it will abolish a policy implemented by the previous government and, as soon as it is charge of running the country, change its tune completely?

Such an attitude must be condemned, as others have done. This brings me, obviously, to the helicopter contract, which has resulted in the shameful waste of the taxpayers' money. That is not all that happened at the beginning of the Chrétien regime. The same thing happened with NAFTA, with the Chrétien government condemning, of course, the agreement. That is when I was appointed to the Senate, and our colleagues from the Liberal Party of Canada were taking the stand at the time that the Mulroney government should not sign any such agreement, because it was contrary to the economic interests of Canada.

• (1610)

Some colleagues pointed to the corruption within the Mexican government, saying that we should not get involved with such people. This was heard in this very place.

But as soon as it took office, what did the Chrétien government do? It recognized the merits of NAFTA. We could also list all the criticism Mr. Mulroney came under because of his friendly personal relationship with American presidents. Yet Prime Minister Chrétien was clearly seen playing golf with Presidents Bush and Clinton. Conduct that was considered despicable when the previous government was in office has become the norm.



Honourable senators, these contortions by the Liberal federal government of Mr. Chrétien deserve to have a finger pointed at them. Canadian public opinion must be made aware of the situation when the political and campaign speeches start up. This has cost us dearly as far as ethical behaviour and the value of political discourse is concerned. We have had one concrete example of the wasting of public funds: the cancellation of the helicopter contract, the one instance where we probably ought to have done the opposite of what we did. During the election campaign, much was made of the cancellation of the infamous helicopter contract. But what price, that cancellation? Hundreds of millions of the taxpayers' dollars went to the companies involved, in compensation for the fact that the Government of Canada changed its mind.

Still worse, honourable senators, the Canadian Forces problem remains unchanged 5 or 10 years later, and the problem must be solved, or it will cost us goodness knows how much more. If there is one concrete example of government management that merits condemnation because of all the public funds that have been wasted, then this is it.

Then we had the whole mess at Human Resources a few years ago. Bad management on the part of the Chrétien-Martin government, where once again, disregarding the noble and necessary objectives of the HRDC programs, public funds were simply squandered, thereby depriving the clients of these programs of the government services to which they were entitled, as the result of bad management, poor administration by the Chrétien-Martin government.

Then there is another instance that merits even more attention: the famous sponsorship program, and all the stories connected with that, of which we are all aware. Outside of the financial losses, and all the scams involved, this program was also an insult to Quebecers. As if keeping Quebec in Canada would happen as the result of a lot of sponsorship ads! As if advertising techniques used commercially would work to sell Canada to the people of Quebec!

Honourable senators, if Quebecers are to feel a part of the Canadian political whole, this should be the result of a far more adult approach by the federal government, one far more respectful of people's intelligence. Can anyone think for one second that the sight of a billboard selling Canada would change one single Quebecer's mind about keeping Quebec within the Canadian federation? It would be an insult to the intelligence of Quebecers to think that putting up billboards...

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Has public opinion changed in Quebec?

**Senator Rivest:** No, public opinion in Quebec has not changed. The Parti Québécois was defeated in the last election as it had been without the sponsorships in 1970, as it was defeated in 1985, and that without the sponsorship program. The opinion polls, unfortunately, despite this idiotic sponsorship program that is an insult to the intelligence of Quebecers, indicate that the rate — if you ask the same referendum question — is about 40 per cent at this very moment.

Just because there has been a change in government, the issue of relations between Quebec and Canada has not changed. It is certainly not by making it literally a commercial enterprise — operating with such blatant disregard for government management integrity as the recent sponsorship program — that we will improve the situation of Quebecers. Some senators are annoyed about that. Imagine all the cultural, social and recreational groups that have benefited from the sponsorship program. It was not fair for all the other Canadians. There was as much need to help and support local cultural and sporting initiatives across Canada, and the money was diverted to Quebec, for political purposes. And it gets worse! It was diverted by using rights which, administratively speaking, are completely reprehensible. Justice will take its course, but the ethics of good government management, the way these programs were conducted, is completely reprehensible and unacceptable. I am sorry to have to say this, but political responsibility lies with the government of the day and no one else.

**Senator Robichaud:** I am ready to bet that we will win the next election!

**Senator Rivest:** Honourable senators, I am being told that "we will win the next election." It is as if the government behaved according to the rule "we will do whatever we want, since we are going to win the election." One Quebec politician said exactly the same thing. His name was Maurice Duplessis. Senator Lapointe did a wonderful job of bringing him to life on the small screen and demonstrated that this was not the way to behave when one is aware of what constitutes a healthy public administration!

The honourable senator, it seems, is not the least bit interested in ethical management. The election results are the only thing that matter. Is that what you believe? No matter what the means? That is exactly what the voice from the past said when it recalled the exact "Duplessis-style" methods that had been employed in Quebec and were so loudly denounced and reviled by all Quebecers, in large part due to the quality of Senator Lapointe's performance.

Consider the employment insurance program management. The government brags about having reduced the deficit. What did it do? It asked the contributors, both employers and workers, to literally fund all government programs over and above the taxes they already were paying as taxpayers, in order to reduce the deficit. In this regard, the federal government demonstrated very poor management indeed. The job security program is unique. The government did not have the right to use it to solve the serious problems with public finance that existed at the time.

• (1620)

Honourable senators, we have to criticize the Chrétien-Martin years very harshly for this and the fight against the deficit. What struck me about the health transfer is how many years it took before it was carried out. It required joint action on the eve of the federal election, while the Prime Minister of Canada was quite aware of the impact of his decision on future elections. It required joint action by Mr. Harris and Mr. Bouchard to force the federal government to make concessions to the provinces — who bore the brunt of the deficit reduction — for a bit of room to finance health and social programs.

Honourable senators, do you know the consequences of waiting and parsimony on recognizing how extremely serious the problem was in financing health and social services programs in Canada? Do you know the consequences of waiting to take informed and committed decisions to improve the situation and meet the needs of Canadians? Do you know what pressure the provincial governments and clients were under in every health and social services establishment in Canada? People waited and paid with their health for the bad administrative and financial decisions taken by the Canadian government.

Honourable senators, a deliberative assembly such as the Senate cannot keep silent in the face of such administrative shortcomings in the way the Canadian government is being run. I would like to thank Senator LeBreton and congratulate her for having given us this opportunity to debate the important matters relating to parliamentary control over the administration.

I am convinced that some senators, who are grinning right now, can think of only one thing: the date of the election.

Honourable senators, throughout Canada's political history, many people have worked solely to get elected, but thanks to the wisdom of the public they were defeated. This is what you can expect in the next election.

**Hon. Laurier L. LaPierre:** Honourable senators, I must thank you for this trip under the big top of the Cirque du Soleil. Your performances have amused and amazed us. May I congratulate the Honourable Senator Rivest, whose presentation was worthy of TV. I fear he may have missed his calling.

**Hon. Marcel Prud'homme:** Honourable senators, I wish to make a very brief comment and to ask a question to Senator Rivest.

**Hon. Serge Joyal (The Hon. the Acting Speaker):** I regret to inform you that the time allotted to Senator Rivest has run out. Is leave granted to the honourable senator to ask a question?

**Senator Prud'homme:** Honourable senators, the honourable senator has indicated that his primary motivation was to see that he was not re-elected. As a loyal and trusted adviser to Robert Bourassa, did it never occur to him that his primary motivation for any and all advice provided was the re-election of Robert Bourassa?

**Senator Rivest:** Despite excellent advice, Mr. Bourassa was defeated in 1976.

On motion of Senator Kinsella, for Senator Eyton, debate adjourned.

[English]

## BANKING, TRADE AND COMMERCE

### MOTION TO AUTHORIZE COMMITTEE TO MEET DURING ADJOURNMENT OF THE SENATE WITHDRAWN

On Motion No. 135:

That the Standing Senate Committee on Banking, Trade and Commerce be empowered, in accordance with rule 95(3)(a), to sit during the summer adjournment, even

though the Senate may then be adjourned for a period exceeding one week, until such time as the Senate returns in September of 2003.

**Hon. Richard H. Kroft:** Honourable senators, I would ask that this item be removed from the Order Paper on the basis that time has made it irrelevant.

**The Hon. the Acting Speaker:** Is it agreed, honourable senators?

**Hon. Senators:** Agreed.

Motion withdrawn.

## FOREIGN AFFAIRS

### MOTION TO AUTHORIZE COMMITTEE TO MEET DURING ADJOURNMENT OF THE SENATE— DEBATE ADJOURNED

**Hon. Peter A. Stollery,** pursuant to notice of September 24, 2003, moved:

That the Standing Senate Committee on Foreign Affairs, in accordance with rule 95(3)(a) of the Rules of the Senate, be empowered to sit on October 14 and 15, 2003, even though the Senate may then be adjourned for a period exceeding one week.

**The Hon. the Acting Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

On motion of Senator Kinsella, for Senator Di Nino, debate adjourned.

[Translation]

## ADJOURNMENT

Leave having been given to revert to Government Orders: Motions:

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(h), I move:

That when the Senate adjourns today, it do stand adjourned until Tuesday, September 30, 2003, at 2 p.m.

**His Honour the Acting Speaker:** Honourable senators, is leave granted?

**Some Hon. Senators:** Agreed.

Motion agreed to.

The Senate adjourned until September 30, 2003, at 2 p.m.



**THE SENATE OF CANADA**  
**PROGRESS OF LEGISLATION**  
**(2nd Session, 37th Parliament)**  
**Thursday, September 25, 2003**

**GOVERNMENT BILLS**  
**(SENATE)**

No.	Title	1 <sup>st</sup>	2 <sup>nd</sup>	Committee	Report	Amend	3 <sup>rd</sup>	R.A.	Chap.
S-2	An Act to implement an agreement, conventions and protocols concluded between Canada and Kuwait, Mongolia, the United Arab Emirates, Moldova, Norway, Belgium and Italy for the avoidance of double taxation and the prevention of fiscal evasion and to amend the enacted text of three tax treaties.	02/10/02	02/10/23	Banking, Trade and Commerce	02/10/24	0	02/10/30	02/12/12	24/02
S-13	An Act to amend the Statistics Act	03/02/05	03/02/11	Social Affairs, Science and Technology	03/04/29	0	03/05/27		

**GOVERNMENT BILLS**  
**(HOUSE OF COMMONS)**

No.	Title	1 <sup>st</sup>	2 <sup>nd</sup>	Committee	Report	Amend	3 <sup>rd</sup>	R.A.	Chap.
C-2	An Act to establish a process for assessing the environmental and socio-economic effects of certain activities in Yukon	03/03/19	03/04/03	Energy, the Environment and Natural Resources	03/05/01	0	03/05/06	03/05/13	7/03
C-3	An Act to amend the Canada Pension Plan and the Canada Pension Plan Investment Board Act	03/02/26	03/03/25	Banking, Trade and Commerce	03/03/27	0	03/04/01	03/04/03	5/03
C-4	An Act to amend the Nuclear Safety and Control Act	02/12/10	02/12/12	Energy, the Environment and Natural Resources	03/02/06	0	03/02/12	03/02/13	1/03
C-5	An Act respecting the protection of wildlife species at risk in Canada	02/10/10	02/10/22	Energy, the Environment and Natural Resources	02/12/04	0	02/12/12	02/12/12	29/02
C-6	An Act to establish the Canadian Centre for the Independent Resolution of First Nations Specific Claims to provide for the filing, negotiation and resolution of specific claims and to make related amendments to other Acts	03/03/19	03/04/02	Aboriginal Peoples	03/06/12	5	referred back to Committee 03/09/25		
C-8	An Act to protect human health and safety and the environment by regulating products used for the control of pests	02/10/10	02/10/23	Social Affairs, Science and Technology	02/12/10	0	02/12/12	02/12/12	28/02
C-9	An Act to amend the Canadian Environmental Assessment Act	03/05/06	03/05/13	Energy, the Environment and Natural Resources	03/06/04	0	03/06/05	03/06/11	9/03

No.	Title	1 <sup>st</sup>	2 <sup>nd</sup>	Committee	Report	Amend	3 <sup>rd</sup>	R.A.	Chap.
C-10	An Act to amend the Criminal Code (cruelty to animals and firearms) and the Firearms Act	02/10/10	02/11/20	Legal and Constitutional Affairs	02/11/28	Divided Message from Commons concurring with division 03/05/07			
C-10A	An Act to amend the Criminal Code (firearms) and the Firearms Act	-	-	Legal and Constitutional Affairs	02/11/28	0	02/12/03	03/05/13	8/03
C-10B	An Act to amend the Criminal Code (cruelty to animals)	-	-	Legal and Constitutional Affairs	03/05/15	5	03/05/29 Message from Commons- agree with two amendments, disagree with two, and amend one 03/06/09 Referred to committee 03/06/11 Reported 03/06/12 Report adopted (insist on one, replace one, amend one) 03/06/19		
C-11	An Act to amend the Copyright Act	02/10/10	02/10/30	Social Affairs, Science and Technology	02/12/05	0	02/12/09	02/12/12	26/02
C-12	An Act to promote physical activity and sport	02/10/10	02/10/23	Social Affairs, Science and Technology	02/11/21	0 + 1 at 3 <sup>rd</sup> 02/12/04 2 at 3 <sup>rd</sup> 03/02/04	03/02/04	03/03/19	2/03
C-14	An Act providing for controls on the export, import or transit across Canada of rough diamonds and for a certification scheme for their export in order to meet Canada's obligations under the Kimberley Process	02/11/19	02/11/26	Energy, the Environment and Natural Resources	02/12/04	0	02/12/05	02/12/12	25/02
C-15	An Act to amend the Lobbyists Registration Act	03/03/19	03/04/03	Rules, Procedures and the Rights of Parliament	03/05/14	1	03/05/28 Message from Commons- agree with amendment 03/06/09	03/06/11	10/03



No.	Title	1 <sup>st</sup>	2 <sup>nd</sup>	Committee	Report	Amend	3 <sup>rd</sup>	R.A.	Chap.
C-21	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2003	02/12/05	02/12/10	—	—	—	02/12/11	02/12/12	27/02
C-24	An Act to amend the Canada Elections Act and the Income Tax Act (political financing)	03/06/11	03/06/16	Legal and Constitutional Affairs	03/06/19	0	03/06/19	03/06/19	19/03
C-25	An Act to modernize employment and labour relations in the public service and to amend the Financial Administration Act and the Canadian Centre for Management Development Act and to make consequential amendments to other Acts	03/06/03	03/06/13	National Finance	03/09/18	0			
C-28	An Act to implement certain provisions of the budget tabled in Parliament on February 18, 2003	03/05/27	03/06/04	National Finance	03/06/12	0	03/06/19	03/06/19	15/03
C-29	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2003	03/03/25	03/03/26	—	—	—	03/03/27	03/03/27	3/03
C-30	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2004	03/03/25	03/03/26	—	—	—	03/03/27	03/03/27	4/03
C-31	An Act to amend the Pension Act and the Royal Canadian Mounted Police Superannuation Act	03/06/03	03/06/11	National Security and Defence	03/06/16	0	03/06/17	03/06/19	12/03
C-35	An Act to amend the National Defence Act (remuneration of military judges)	03/06/13	03/09/18	Legal and Constitutional Affairs					
C-39	An Act to amend the Members of Parliament Retiring Allowances Act and the Parliament of Canada Act	03/06/03	03/06/11	Legal and Constitutional Affairs	03/06/19	0	03/06/19	03/06/19	16/03
C-42	An Act respecting the protection of the Antarctic Environment	03/06/13	03/09/17	Energy, the Environment and Natural Resources	03/09/18	0			
C-44	An Act to compensate military members injured during service	03/06/13	03/06/13	National Security and Defence	03/06/16	0	03/06/18	03/06/19	14/03
C-47	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2004	03/06/13	03/06/17	—	—	—	03/06/18	03/06/19	13/03

## COMMONS PUBLIC BILLS

No.	Title	1 <sup>st</sup>	2 <sup>nd</sup>	Committee	Report	Amend	3 <sup>rd</sup>	R.A.	Chap.
C-205	An Act to amend the Statutory Instruments Act (disallowance procedure for regulations)	03/06/16	03/06/19	—	—	—	03/06/19	03/06/19	18/03
C-227	An Act respecting a national day of remembrance of the Battle of Vimy Ridge	03/02/25	03/03/26	National Security and Defence	03/04/02	0	03/04/03	03/04/03	6/03
C-249	An Act to amend the Competition Act	03/05/13	03/09/17	Banking, Trade and Commerce					
C-250	An Act to amend the Criminal Code (hate propaganda)	03/09/18							
C-300	An Act to change the names of certain electoral districts	02/11/19	03/06/03	Legal and Constitutional Affairs					
C-411	An Act to establish Merchant Navy Veterans Day	03/06/12	03/06/17	National Security and Defence	03/06/18	0	03/06/19	03/06/19	17/03

## SENATE PUBLIC BILLS

No.	Title	1 <sup>st</sup>	2 <sup>nd</sup>	Committee	Report	Amend	3 <sup>rd</sup>	R.A.	Chap.
S-3	An Act to amend the National Anthem Act to include all Canadians (Sen. Poy)	02/10/02	03/06/10	Social Affairs, Science and Technology					
S-4	An Act to provide for increased transparency and objectivity in the selection of suitable individuals to be named to certain high public positions (Sen. Stratton)	02/10/02							
S-5	An Act respecting a National Acadian Day (Sen. Comeau)	02/10/02	02/10/08	Legal and Constitutional Affairs	03/06/03	2	03/06/05	03/06/19	11/03
S-6	An Act to assist in the prevention of wrongdoing in the Public Service by establishing a framework for education on ethical practices in the workplace, for dealing with allegations of wrongdoing and for protecting whistleblowers (Sen. Kinsella)	02/10/03							
S-7	An Act to protect heritage lighthouses (Sen. Forrestall)	02/10/08	03/02/25	Social Affairs, Science and Technology	03/06/19	0	03/09/24		
S-8	An Act to amend the Broadcasting Act (Sen. Kinsella)	02/10/09	02/10/24	Transport and Communications	03/03/20	0	03/04/02		
S-9	An Act to honour Louis Riel and the Metis People (Sen. Chalifoux)	02/10/23	03/05/06	Legal and Constitutional Affairs					
S-10	An Act concerning personal watercraft in navigable waters (Sen. Spivak)	02/10/31	03/02/25	Energy, the Environment and Natural Resources	03/09/18	0			
S-11	An Act to amend the Official Languages Act (promotion of English and French) (Sen. Gauthier)	02/12/10	03/05/07	Official Languages					
S-12	An Act to repeal legislation that has not been brought into force within ten years of receiving royal assent (Sen. Banks)	02/12/11	03/02/27	Legal and Constitutional Affairs					



No.	Title	1 <sup>st</sup>	2 <sup>nd</sup>	Committee	Report	Amend	3 <sup>rd</sup>	R.A.	Chap.
S-14	An Act to amend the National Anthem Act to reflect the linguistic duality of Canada (Sen. Kinsella)	03/02/11	03/06/17	Official Languages					
S-15	An Act to remove certain doubts regarding the meaning of marriage (Sen. Cools)	03/02/13	Dropped from Order Paper pursuant to Rule 27(3) 03/06/05						
S-16	An Act to amend the Constitution Act, 1867 and the Parliament of Canada Act (Speakership of the Senate) (Sen. Oliver)	03/03/18							
S-17	An Act respecting the Canadian International Development Agency, to provide in particular for its continuation, governance, administration and accountability (Sen. Bolduc)	03/03/25	03/06/19	National Finance					
S-18	An Act to amend the Criminal Code (lottery schemes) (Sen. Lapointe)	03/04/02							
S-20	An Act to amend the Copyright Act (Sen. Day)	03/05/15							
S-22	An Act respecting America Day (Sen. Grafstein)	03/09/16							
S-23	An Act to prevent unsolicited messages on the Internet (Sen. Oliver)	03/09/17							

## PRIVATE BILLS

No.	Title	1 <sup>st</sup>	2 <sup>nd</sup>	Committee	Report	Amend	3 <sup>rd</sup>	R.A.	Chap.
S-19	An Act respecting Scouts Canada (Sen. Di Nino)	03/05/14	03/06/09	Legal and Constitutional Affairs					
S-21	An Act to amalgamate the Canadian Association of Insurance and Financial Advisors and The Canadian Association of Financial Planners under the name The Financial Advisors Association of Canada (Sen. Kirby)	03/06/03	03/06/09	Banking, Trade and Commerce					

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CANADA

# Debates of the Senate

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2nd SESSION

• 37th PARLIAMENT

• VOLUME 140

• NUMBER 79

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OFFICIAL REPORT  
(HANSARD)

**Tuesday, September 30, 2003**

—

THE HONOURABLE DAN HAYS  
SPEAKER



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(Daily index of proceedings appears at back of this issue).

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## THE SENATE

Tuesday, September 30, 2003

The Senate met at 2 p.m., the Speaker in the Chair.

Prayers.

### SENATORS' STATEMENTS

#### INTERNATIONAL BROTHERHOOD OF TEAMSTERS

##### ONE-HUNDREDTH ANNIVERSARY

**Hon. Edward M. Lawson:** Honourable senators, a couple of weeks ago I attended an anniversary party in Washington, D.C. It was held to commemorate the one-hundredth anniversary of the International Brotherhood of Teamsters, a celebration of their 100-year history of successes on behalf of the working men and women of North America and their 1.5 million members.

Interestingly, there was also a political aspect to the celebration. At the Saturday afternoon session, a few American politicians with whom we have a relationship came to pay their respects. The first speaker was former President Bill Clinton. He looks great. He is on the South Beach diet and has lost about 30 pounds. He looks like he is ready to make a run again.

Following him as the second speaker was the senator from New York, Senator Hillary Clinton. Her opening remark was to the effect that she did not mind being the second speaker because it would probably be one of the few times that she might have the last word. She made an excellent presentation.

I have been reading that the Liberals have been talking about picking up their convention in November and that they are thinking of inviting Senator Clinton as their guest speaker. Just do it. She made a great speech and received nine standing ovations. For the benefit of the ladies, she looked smashing in a coral-coloured suit.

At the banquet there was another speaker, Dick Gephardt, whom some honourable senators know. He was the minority leader in the Clinton administration and, by a poll of the membership, has been endorsed to be the Democratic nominee for president.

Another highlight of the occasion was the decision taken by the brotherhood to honour the original Jimmy Hoffa. As an aside, the current president of the brotherhood is Jimmy Hoffa's son, James P. Hoffa. The honour was the creation of the James R. Hoffa Lifetime Achievement Award for officers and members of the brotherhood who have distinguished themselves with their membership and brought credit to the union. Five former officers received this award.

I am proud to say that I was one of the five recipients of the James R. Hoffa Lifetime Achievement Award. I received the

award for my 40 years of service to the union and its members at the provincial level, the national level as international director for Canada and for being elected to four five-year terms as international vice-president in the United States.

#### WOMEN'S CONDITIONS IN SIERRA LEONE

**Hon. Mobina S. B. Jaffer:** Honourable senators, as members of the parliamentary delegation to West Africa, Senator Andreychuk and I visited Sierra Leone and saw how lives are devastated and shattered by the 10-year civil war. However, the effects of conflict and post-conflict zones are different for women than they are for men. Sierra Leone is ranked last on the 2003 UNDP's Human Development Index.

Throughout the armed conflict in Sierra Leone from 1991 to 2001, thousands of women and girls of all ages, ethnic groups and socio-economic classes were subjected to widespread and systematic sexual violence, including individual and gang rape, rape with objects and sexual slavery. Furthermore, amputation of limbs was often used as a weapon of war. A daily reminder of war exists all around with the number of amputees in the community.

Many women in Sierra Leone have survived rape and molestation. They have lost their spouses, their children and their community. The war has greatly disempowered women, not only by destroying their families and communities but also by making it virtually impossible for women to participate in their nation's political rehabilitation.

Thousands of former combatants of the 10-year civil war who have spent years murdering and raping are returning to their communities to live amongst the women and children whom they traumatized. The greatest concern consistently expressed by survivors of sexual violence was that fighters would return and abuse them again.

It is important that the voices of these women be heard. It is on their shoulders that the greatest burden is placed in trying to restore normalcy within families in which children bear the physical and mental scars of warfare; families in which thousands, including the women themselves, are amputees. Yet these women are still expected to carry the greater load of maintaining households of families living in desperate poverty, with no means of support and with insurmountable health issues that need to be addressed.

The Canadian Committee on Women, Peace and Security is working with networks in many conflict and post-conflict zones around the world. We have worked closely with the Afghan diaspora in Canada to engage them in the rebuilding of Afghanistan. We look forward to building partnerships and linkages with women and their networks in Sierra Leone.

Honourable senators, I encourage you to find ways to connect and to build relationships with these women so that we may learn from each other and inform Canadians. We must make building strong partnerships a priority with these countries that are in conflict and have so few resources.

• (1410)

## THE RIGHTS OF THE METIS AS DISTINCT ABORIGINAL PEOPLE

### SUPREME COURT JUDGMENT

**Hon. Gerry St. Germain:** Honourable senators, Senators Joyal, Chalifoux and Beaudoin respectively have spoken on the Supreme Court of Canada's landmark ruling regarding my people, the Metis. This Supreme Court decision has certainly rectified and clarified a long-standing injustice, an injustice that has denied the Metis people their rightful place in Canadian society.

From the time of Louis Riel, and long before then, we Metis have been discriminated against by all who are not Metis. They fell into a huge time void, a time during which they were virtually ignored by governments and society as a whole. It was like these people did not exist. Yet they were the pioneers, explorers, guides, trappers and hunters who were really the basic generators of the early economy of our country. They were hunters, trappers and gatherers who saw no real need or desire to attach themselves to the land in most cases. Their philosophical view was that landownership did not relate to their culture.

Today, honourable senators, let me share with you a true-life experience about being a Metis in Manitoba during the 1940s and 1950s. When I was about 9 or 10 years old, I sat at the supper table — which is now considered the dinner table — with my father, mother and two sisters. My mother and father were not eating. Being the eldest of the three siblings, I asked why. They replied that they were not hungry. That moment in my life has never left me, knowing full well the circumstances.

The very next day, my father and I left before daybreak, in the cold of a Manitoba winter, to hunt a deer in the immediate area. We hunted, hid and then celebrated in secrecy the fact that mom and dad could eat with their three children once again.

Dad was a Metis, a trapper and a hunter, and was persecuted and prosecuted for doing what is now being recognized as his right under section 35 of the Constitution. He trapped and was charged in Manitoba for doing what he figured was his inherent right. They removed from him his guns and humiliated him for doing what he had done since his early childhood.

Dad, wherever you are up there, it took 50-some years, but as of September 19, 2003, you have been vindicated for doing what you should never have been denied, not that you were ever guilty in God's eyes or ours.

Thank you Canada for doing what is right for a segment of our society that was rejected by the Aboriginal community in great numbers, but mostly rejected by the European settlers of that time.

[ Senator Jaffer ]

As many honourable senators know, I have my moments of misgivings concerning our courts and the judicial system in Canada. I would be a hypocrite if I did not own up to that fact. However, I find myself in a strange position today, congratulating the courts in upholding the Constitution Act, 1982 as they have.

[Translation]

## ROUTINE PROCEEDINGS

### AUDITOR GENERAL

#### REPORT ON OFFICE OF PRIVACY COMMISSIONER TABLED

**Hon. Fernand Robichaud (Deputy Leader of the Government):** I have the honour to lay upon the table, in both official languages, two copies of the report by the Auditor General of Canada on the Office of the Privacy Commissioner of Canada.

[English]

### SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

#### BUDGET ON STUDY OF PUBLIC HEALTH GOVERNANCE AND INFRASTRUCTURE— REPORT OF COMMITTEE PRESENTED

**Hon. Marjory LeBreton,** Deputy Chair of the Standing Senate Committee on Social Affairs, Science and Technology, presented the following report:

Tuesday, September 30, 2003

The Standing Senate Committee on Social Affairs, Science and Technology has the honour to present its

#### TWELFTH REPORT

Your Committee, which was authorized by the Senate on June 19, 2003, to examine and report on the infrastructure and governance of the public health care system in Canada, as well as on Canada's ability to respond to public health emergencies arising from outbreaks of infectious disease, respectfully requests that it be empowered to engage the services of such counsel and technical, clerical and other personnel as may be necessary for the purpose of its study.

Pursuant to section 2:07 of the *Procedural Guidelines for the Financial Operation of Senate Committees*, the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that Committee are appended to this report.

Respectfully submitted,

MARJORY LEBRETON  
Deputy Chair

(For text of report, see today's Journals of the Senate, Appendix A, p. 1095.)



**The Hon. the Speaker:** Honourable senators, when shall this report be taken into consideration?

On motion of Senator LeBreton, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

## NATIONAL SECURITY AND DEFENCE

### BUDGET ON STUDY OF NEED FOR NATIONAL SECURITY POLICY— REPORT OF COMMITTEE PRESENTED

**Hon. Colin Kenny,** Chair of the Standing Senate Committee on National Security and Defence, presented the following report:

Tuesday, September 30, 2003

The Standing Senate Committee on National Security and Defence has the honour to present its

### FIFTEENTH REPORT

Your Committee was authorized by the Senate on Wednesday, October 30, 2002, to examine and report on the need for national security policy for Canada.

Pursuant to Section 2:07 of the *Procedural Guidelines for the Financial Operation of Senate Committees*, the budget application submitted was printed in the Journals of the Senate of April 29 2003. On Thursday, September 25, 2003, the Standing Committee on Internal Economy, Budgets and Administration approved the release of a further \$ 40 000 to the Committee. The report of the Standing Committee on Internal Economy, Budgets and Administration recommending the release of additional funds is appended to this report.

Respectfully submitted,

COLIN KENNY  
*Chair*

(For text of report, see today's Journals of the Senate, Appendix B, p. 1101.)

**The Hon. the Speaker:** Honourable senators, when shall this report be taken into consideration?

On motion of Senator Kenny, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

[Translation]

## USER FEES BILL

### FIRST READING

**The Hon. the Speaker** informed the Senate that a message had been received from the House of Commons with Bill C-212, An Act respecting user fees.

Bill read first time.

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the second time?

On motion of Senator Robichaud, bill placed on the Orders of the Day for second reading two days hence.

[English]

## CHRÉTIEN-MARTIN GOVERNMENT MANAGEMENT OF HUMAN RESOURCES

### NOTICE OF INQUIRY

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I give notice that on Thursday, October 2, 2003, I shall call the attention of the Senate to the failure of the Martin/Chrétien government to provide adequate oversight in the management of human resources and public funds in certain federal agencies.

## QUESTION PERIOD

### PUBLIC SERVICE COMMISSION

#### AUDITOR GENERAL'S REPORT— STAFFING IRREGULARITIES IN OFFICE OF PRIVACY COMMISSIONER

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, the Auditor General stated this morning that she was told of a poisoned environment in the workplace at the Office of the Privacy Commissioner "in which staff were intimidated by the former commissioner."

• (1420)

The Auditor General noted what she called:

...an environment of fear and arbitrariness in the Office of the Privacy Commissioner that led to a major breakdown of controls over financial management, human resources management, contracting, and travel and hospitality.

Although the Public Service Commission carried out a study of staffing irregularities in 2001, the Public Service Commission failed to respond decisively. This sent a message to employees of the Office of the Privacy Commissioner that the Public Service Commission would not actively support any attempts to clean up the staffing abuses at that agency.

My question to the minister is this: Why did the Public Service Commission fail to take decisive action when it learned about staffing irregularities over two years ago?

**Hon. Sharon Carstairs (Leader of the Government):** I thank the honourable senator for his question. I must tell honourable senators that I do not know why the Public Service Commission failed to respond. The Public Service Commission apparently did what it thought it should do and did not take action. The Auditor General herself did not seem to understand exactly why such action was not taken.

## TREASURY BOARD

### INCLUSION OF WHISTLE-BLOWING MEASURES IN BILL C-25

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, the Auditor General also noted that there were instances of humiliation of staff, inappropriate comments, intolerance and verbal abuse. Employees who had questioned or displeased the former commissioner or his inner circle were banished from the commissioner's floor, excluded from meetings they should have attended, were not allowed to put their names on reports, and were moved to other positions. Such actions are classic examples of retaliation when an employee blows the whistle in the public's interest. Auditors were told:

...employees at the Office of the Privacy Commissioner perceived the avenues for reporting wrongdoing or financial mismanagement as generally ineffective, offering little or no protection to staff who might notify a superior officer or the Public Service Integrity Officer.

The Auditor General stated this morning that whistle-blowing legislation is worth exploring. My question to the minister is this: Will the government now agree to incorporate whistle-blowing legislation into Bill C-25, the bill that is before this house?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, the government will not agree to incorporate whistle-blowing into Bill C-25. However, we have agreed — and I think this is most necessary — to put into place a working group including the Integrity Commissioner, Dr. Keyserlingk, and have requested that that group report within four months. A whistle-blowing policy, regime or legislation — whatever the recommendation may be — would be a made-in-Canada decision in the best interests of Canadians.

## PRIVACY COMMISSIONER

### AUDITOR GENERAL'S REPORT— RECOUPING OF EXPENSES

**Hon. David Tkachuk:** Honourable senators, today in her review of the spending habits of the former Privacy Commissioner, the Auditor General stated that he spent public money on travel and hospitality unreasonably and extravagantly, without regard to prudence and probity. The Auditor General estimated that the government hopes to recoup \$200,000 to \$250,000 from various executives in the office, \$250,000 in unjustified reclassification, and at least \$100,000 from the former Privacy Commissioner himself.

Is it the intention of the government to adopt the same policy towards Mr. Radwanski's expenses as it did on his income tax owing?

**Hon. Sharon Carstairs (Leader of the Government):** As the honourable senator knows, George Radwanski was an officer of Parliament appointed on the approval of both the other place and this place. Unfortunately, we do not have in place something which we should carefully consider, and that is an entity who examines the agents of Parliament.

The operations committee of the other place, which was just recently formed, has undertaken that task. That is how most of this matter came to light. It was their request that the Auditor General look into this situation, and also that the Public Service Commission look into it.

We do not have a similar committee in the Senate of Canada. I am not sure that we need a stand-alone committee, but perhaps we need to give an additional mandate to the National Finance Committee, which is, by tradition, chaired by an opposition member. That is something I hope all of us might take under very active consideration.

As to the specific question that the honourable senator asked, my understanding is that all agent generals or officers of Parliament are given a guidebook. They are provided with terms and conditions of employment, and they are given customized operational sessions. They are also told how they must comply with the provisions of the Conflict of Interest and Post-Employment Code for Public Office Holders. I would assume that if any violations fit within those restrictions, then the monies could be recovered.

## PRIVY COUNCIL OFFICE

### PERFORMANCE MEASUREMENT AND REPORTING TO PARLIAMENT

**Hon. David Tkachuk:** I did ask whether the policy would be the same as the government had used toward the income tax that the commissioner owed just prior to his appointment. Also, in regard to the performance measurement and reporting to Parliament, I understand that that is an optional session at the present time. That is in response to the Auditor General and the Privy Council office. They promised to make a number of changes, including customized orientation sessions, but they made that session of performance measurement and reporting to Parliament an optional session.

In light of the revelations of the Auditor General that the Office of the Privacy Commission knowingly attempted to mislead Parliament by omitting about \$234,000 of accounts payable in their financial statements, why would a session on performance measurement and reporting to Parliament be optional?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I am not sure that my information or the information of the honourable senator is correct on whether that session is optional.



**Senator Tkachuk:** I am sure my information is correct.

**Senator Carstairs:** If it is optional, I will find out why it is optional, and whether it will now become compulsory.

## OFFICE OF PRIVACY COMMISSIONER

### APPOINTMENT OF NEW COMMISSIONER

**Hon. David Tkachuk:** Honourable senators, in her report on the former Privacy Commissioner, the Auditor General noted that the interim Privacy Commissioner will implement a program to restore confidence in that office, including implementing the many recommendations of both the Public Service Commission and the Auditor General. There is no provision in the Privacy Act to extend the appointment of the interim Privacy Commissioner, whose appointment will expire on December 26, 2003. Furthermore, the Privacy Act, in subsection 53(1), requires the appointment of a new Privacy Commissioner to be approved by resolution of the Senate and the House of Commons.

Can the Leader of the Government in the Senate tell us when the appointment of a new commissioner will be made and reviewed before Parliament? Can she assure us that this appointment will be made prior to any possible prorogation of Parliament?

**Hon. Sharon Carstairs (Leader of the Government):** As the honourable senator opposite knows, the interim Privacy Commissioner indicated that he did not wish to serve any longer than the six-month period. Obviously, a new Privacy Commissioner will have to be appointed. It is hoped that that person will be appointed relatively soon.

## THE SENATE

### VOTE ON APPOINTMENT OF PRIVACY COMMISSIONER

**Hon. Marcel Prud'homme:** Honourable senators, the Senate has fulfilled its rightful role and duty by calling on to the floor of this chamber for review every past commissioner. We now have an interim commissioner for whom we all have high esteem. In fact some of us were subject to immense hatred and unbelievable hate letters — and there is no other word for it, since there is a bill on the date — after I personally forced a vote for the nomination of Mr. Radwanski. I wish to remind everyone that Senators Atkins, Comeau, Di Nino, LeBreton, Nolin, Prud'homme, and St. Germain voted against his nomination. Senators Forrestall, Gauthier, Meighen and Simard abstained.

In view of that vote on that day, being quite unusual, a vote that was forced by me, would it be the opinion of the Leader of the Government that we ask for a vote the next time a potential commissioner comes before this house to be questioned, as is the duty of the Senate? Even if the vote were 100 to zero, I think it would be good to ask all honourable senators to stand up.

• (1430)

If my colleagues want to have a good laugh, especially the new senators, they should read the testimony to which we subjected Mr. Radwanski for two days. Some colleagues may not be too happy to see how the praising of someone could eventually turn

out to be embarrassing. Yet those of us who questioned him and voted against him still stand behind what we said at that time and what seems to have been proven today. The question is very simple: Would the leader consider my proposal if either Senator Kinsella, for instance — he always loved to do this — or someone else joined me to question the actual commissioner? The time is short, but certainly the next commissioner should be asked again to come here, in view of the traditions so well espoused by the Senate.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, there are two parts to that question. The first is with respect to voting. We must vote. Whether that vote is a recorded vote, it is a decision made by at least two senators in this chamber, and that cannot be changed. We have a right to approve or reject the name that comes forward, and we can do it by an oral vote or by a standing vote, whichever the Senate decides.

In terms of whether we should ask someone to appear before us again, I think it is an excellent idea that they should. Unfortunately, I do not think any of us anticipated the kind of question that might have prevented what has been described by the Auditor General as a "poisoned atmosphere."

## FISHERIES AND OCEANS

### REQUIREMENT OF PUBLIC SERVANTS TO REPORT ON MEETINGS WITH SENATORS AND MEMBERS OF PARLIAMENT

**Hon. Gerald J. Comeau:** Honourable senators, my question is addressed to the Leader of the Government in the Senate. It concerns the fact that reports must be made by all DFO officials of all contacts with MPs, senators and representatives of senators who meet or talk with such an official, to the supervisor of the employee within 24 hours of contact.

Bill C-25 is not yet passed and we are already heading towards a climate of intimidation. I have many DFO friends whom I meet with on an ongoing basis, not necessarily to discuss DFO subjects. Will my friends now have to report to their supervisor that they have met with me? If they do not, would they then be in a position whereby, if they were spotted talking to me and that was reported to their supervisor, they could be in trouble with their supervisors for having talked to a senator?

**Hon. Sharon Carstairs (Leader of the Government):** The honourable senator has made a serious statement this afternoon. I do not know of any circumstances under which public servants would be forbidden to speak with parliamentarians. Indeed, I took one to lunch on Friday in Winnipeg to thank him for his service to western economic diversification. I would be horrified if it would have to be reported that we had had a friendly lunch.

**An Hon. Senator:** How much?

**Senator Carstairs:** How much? I think the bill came to \$42, actually, and there was a third person there, too.

I am appalled by what the honourable senator has told me, and I will seek that information for him.

**Senator Comeau:** Honourable senators, if this report is correct and if, in fact, what the official responded was that these reports must be made so that DFO officials provide the proper information to senators, members of Parliament and their representatives, that is a nice way of explaining the fact that reports of such meetings need to be relayed to the supervisor. I fear that this is not as simple as saying, "We want to provide good service to the senators." My fear is that if such reports have to be made back to the supervisors, it can create a climate of intimidation, in spite of the positive spin that is given by officials of the department.

I think we had an indication from Senator Kinsella a while ago that if you create an environment of fear and intimidation, and so on, what we saw with respect to Mr. Radwanski could very well extend into other departments, which is something that we do not want. We will soon be going into debate on Bill C-25, which contains the merit principles, whistle-blowing and a whole host of other controls that we should have. However, it appears as if the Liberal side will not support it. We will be heading into a period that, to me, is not reflective of traditional and historical Liberal values on how we deal with public servants. I am very much afraid that if this is the kind of message that is being passed on by DFO officials, namely that they report meetings with senators and members, then this is not the way that we should be proceeding at all.

**Senator Carstairs:** Honourable senators, I thank the honourable senator for raising that question this afternoon because I think he has raised a serious point. I will get back to him, because obviously we cannot generalize about these issues. I want to know if there is indeed a policy in place, as the honourable senator seems to believe. If there is, I want to know why it is in place, and I will get a full and thorough response to him as quickly as possible.

## VETERANS AFFAIRS

### VETERANS INDEPENDENCE PROGRAM— ENTITLEMENT TO WIDOWS

**Hon. Michael A. Meighen:** Honourable senators, I want to address, once again, the sorry situation into which a heartless government seems determined to confine many of our veterans' widows.

Yesterday, it was revealed that Liberal MP Dan McTeague, an ardent supporter of Mr. Martin, wrote a strongly worded letter to the Minister of Veterans Affairs. Mr. McTeague was writing on behalf of the 23,000 veterans' spouses who will be arbitrarily excluded from the department's Veterans Independence Program for no other reason than that they are no longer in receipt of these benefits, the 12 month period since the death of their husbands and spouses having expired. The result, honourable senators, is that some widows will get these benefits and some will not.

Mr. McTeague called this plan completely unacceptable, even repulsive, and correctly pointed out that it was morally reprehensible to spend \$100 million on a political history museum, as this government seems determined to do, while veterans' widows go without.

Honourable senators, it is also a cop-out for the Minister of Veterans Affairs to say that there is no money. Of course there is: It is just a question of whether this government can get its priorities right.

My question to the Leader of the Government in the Senate is as follows: In light of Mr. McTeague's remarks and a host of other criticisms of this plan, will the government now consider revisiting its decision concerning VIP benefits for veterans' widows, or will we have to wait at the very least until next February for justice to be done, callously leaving the spouses of thousands of aging veterans to hang in limbo in the meantime?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, as the honourable senator knows quite well, the Department of Veterans Affairs responded in May of 2003, with a promise at a cost of some \$65 million over five years, to ensure that 10,000 survivors will retain lifetime housekeeping and ground maintenance services after the veteran's death. These are people who are already in receipt of that benefit, and this will allow it to continue. For those survivors who do not qualify for lifetime continuation of the VIP housekeeping and ground maintenance benefits, the Department of Veterans Affairs will help them to access programs and services in their own communities.

**Senator Meighen:** Could the Leader of the Government explain the rationale for deciding why those who are in receipt of the benefit are entitled to keep it for the remainder of their lifetime while, for some unknown reason, those who had received it for 12 months, and are therefore no longer receiving it, are cut off? What is wrong with the second class?

**Senator Carstairs:** Frankly, my understanding is that the people who have not ever received it are the ones who will not qualify. The information that I have is that it was just not possible to provide it for all survivors. Given the many competing priorities of government, this was not possible at this time. It may be, as we know from experience with other veterans benefits in the past, that the definitions of such groups have become broader and broader, but at this time the measure was to address those who were currently in receipt of the benefit.

**Senator Meighen:** Honourable senators, surely the Honourable Leader of the Government in the Senate is not suggesting that a political history museum is a legitimately competing priority. I would ask her to verify her information to the effect that those who are not in receipt now because of this arbitrary ruling have never been in receipt. My information is that they did receive the benefits for 12 months but that the former rule was that after 12 months it would be cut off, and they would no longer be entitled.

• (1440)

The minister has said — and I applaud him for this — that those who are now in receipt of the benefits may continue to receive them for the rest of their lives, but those who are not, because the 12 months have expired, are arbitrarily cut off. This is not fair.



**Senator Carstairs:** Honourable senators, let me read exactly from the note I have been given:

The government appreciates the sacrifices made by veterans and the care provided by their spouses. In response to a top priority of the national veterans organizations for the continuation of VIP services, we responded by changing our regulation to ensure that, over the next five years, at a cost of \$65 million, more than 10,000 survivors will retain lifetime housekeeping and ground maintenance services after the veteran's death. Prior to this amendment, they would have lost these services the year following the death of their spouse.

**Senator Meighen:** That is correct.

## FOREIGN AFFAIRS

### UNITED STATES—PARTICIPATION IN MISSILE DEFENCE SYSTEM

**Hon. Douglas Roche:** Honourable senators, my question is directed to the Leader of the Government in the Senate. Today, there was convened in Ottawa an experts' session on Canada and ballistic missile defence. Convened by the Simon Centre for Peace and Disarmament Studies, the Liu Institute for Global Issues, the University of British Columbia, Project Ploughshares, it brought together experts from the United States and Canada on this subject. Among the many sources of information referred to was the recently released report of the U.S. General Accounting Office, which points to possible cost increases and technical failures that may lead the U.S. to slow down this program, another reason for Canada to delay. I have a copy of the report in my hand and will gladly make it available to the minister.

The results of the seminar that was held this morning will be given at 4 p.m. this afternoon by the Honourable Lloyd Axworthy, former foreign minister of Canada, at a press conference.

Will the minister accept to take the results of this expert session to the Prime Minister and her cabinet colleagues and also ensure that the Canadian officials now conducting discussions with the U.S. on this subject receive this material?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I am pleased to say to the honourable senator that if he makes that material available, I will personally write a letter to the Prime Minister and see that it is hand delivered to him.

### UNITED STATES—PARTICIPATION IN MISSILE DEFENCE SYSTEM—PARTICIPANTS IN DISCUSSIONS

**Hon. Douglas Roche:** Honourable senators, I thank the minister for that response, especially her offer to hand deliver a letter to the Prime Minister.

This whole matter of Canada's possible involvement in ballistic missile defence is of crucial importance to Canada's role in the world, and yet the discussions between Canada and the U.S. are being held in secret. The Canadian people are being told nothing

about the details of what exactly Canada is considering doing. Last week, I asked for a progress report and nothing has been forthcoming. Will the minister give honourable senators at least the names of the Canadian officials who are representing our country in these discussions?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, the honourable senator asks for names of the officials participating in those discussions. He knows that discussions frequently take place with varying members. If, in fact, there is a specific list of individuals that I can make available to the honourable senator, I will be pleased to do so.

**Senator Roche:** When discussions and negotiations took place between Canada and the United States on the free trade agreement, the names of the negotiators were published and people had an opportunity to examine their views.

## HEALTH

### NATIONAL HEALTH COUNCIL

**Hon. Wilbert J. Keon:** Honourable senators, I have a question for the Leader of the Government. The federal government and most of the provinces have agreed to create a national health council comprised of 27 members, including a chairperson, 13 government representatives and 13 members from outside government. Alberta Premier Ralph Klein has said that the makeup of the health council is not the same as was initially recommended and that his province will not join until the council resembles the original proposal. The number of board members appears to be a sticking point in Alberta's refusal to join at this time. Could the Leader of the Government in the Senate tell us if a 27-member board was part of the initial proposal of the national health council and if all provinces had previously agreed to it?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, my understanding is that no absolute number was put on the participation in this council. This issue was up for debate and discussion. It was hoped that the council would be relatively small. I know that this was the wish of the federal Minister of Health. However, the territories and the provinces insisted on having one representative each. The number of participants obviously started with 13 and grew from there. I do not think it is absolutely accurate to say that the number has changed; I think it has evolved from the very beginning of the concept of a national health council.

**Senator Keon:** Honourable senators, the number of people who will be sitting on the board, 27, is indeed large and may cause some difficulty in arriving at an agreement among members. Last year, the Romanow commission suggested a 14-member board for the council, and our own Senate committee studying health suggested an eight-member committee plus a chairman, or a nine-member committee. Could the Leader of the Government in the Senate tell us how this number of 27 was arrived at and if the federal government has any fears that the board may be unmanageable due to its size?

**Senator Carstairs:** As I indicated, we started with a board of 13 with representatives from all the provinces and territories. The number was increased to allow for representation from various areas of interest that I think everyone had hoped in the first place could have been combined with the 13, but that was not the way it worked. We have to work on the premise that the most important thing here is to get a health council. If it is found that the council is too large, then hopefully the provinces, the federal government and the territories can agree to reduce that number in the future.

## UNITED NATIONS

### ISRAEL—VOTE ON RESOLUTION TO HALT THREATS TO PRESIDENT OF PALESTINIAN COUNCIL

**Hon. Marcel Prud'homme:** Honourable senators, last week I asked a very precise question expressing my surprise — not shock but surprise — at the way Canada voted on a very important resolution. By the way, that question, which was very clear and very innocent, has since subjected me to unbelievable blackmail and threats and insult. I will provide soon some of the hate literature to those who are interested. My question was very simple. I asked why Canada abstained in the company of countries that I do not need to repeat, but countries like Cameroon, Fiji, Papua New Guinea, Tonga, Tuvalu, Micronesia and Marshall Islands, who were against. All our important friends — Great Britain, Russia, France, China, plus all their allies — voted in favour of the resolution. However, Canada saw fit to abstain on this very important resolution to stop any threat of killing — killing not by terrorists, but killing by even the ex-mayor of Jerusalem and others. I do not think this will induce peace in the Middle East. Why has Canada voted this way? I have the explanation of the vote by the ambassador. That surprised me even more. We live in a free country where we can ask this kind of question without being subjected to vicious and unbelievable attacks. I shall read them next week and expose their names so that all Canadians know the kind of Canadians we may have on this issue of the Middle East. I have endured 40 years of that kind of insult, so now the time has come for me to make their views public. However, will you kindly help me in my reflection to know why we saw fit to abstain and keep away from all our friends and allies?

• (1450)

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I can tell the honourable senator that there was much in the resolution that Canada could support, including the demand on both Israel and the Palestinians to implement their obligations in accordance with the road map.

However, in the view of the Canadian government, the resolution did not pay sufficient attention to the responsibility of the Palestinian authority to take all necessary measures to stop terrorism and incitement. Violence, in the view of the Canadian government, is not the path to a Palestinian state. The resolution did not, in our view, reflect this reality, and for this reason the Canadian representative abstained.

**Senator Prud'homme:** Briefly, I know that some of my — go ahead and applaud.

**The Hon. the Speaker:** I regret to advise honourable senators that the time for Question Period has expired.

## CRIMINAL CODE

### BILL TO AMEND—MESSAGE FROM COMMONS

**The Hon. the Speaker:** Honourable senators, I have the honour to inform the Senate that a message has been received from the House of Commons in the following form:

Monday, September 29, 2003

Ordered, —

That a message be sent to the Senate to acquaint their Honours that, with respect to Bill C-10B, An Act to amend the Criminal Code (cruelty to animals), this House continues to disagree with the Senate's insistence on amendment numbered 2 and disagrees with the Senate's amendments numbered 3 and 4. This House notes that there is agreement in both Houses on the need for cruelty —

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I rise on a point of order. Would there be agreement that, since this message can only be taken into consideration at the next sitting of the Senate, whether or not we agree, we could dispense with the reading of it since it is being circulated?

[Translation]

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I move that the sitting of the Senate be suspended until the bells are rung to call the senators back for a vote at 3:30 p.m. This would prevent a senator speaking on some other item on the Order Paper from being interrupted at 3 p.m.

[English]

**The Hon. the Speaker:** I am sorry, but I lost my earpiece, and I did not hear all of what the honourable senator said. Could I ask him to indicate again what he is suggesting?

[Translation]

**Senator Robichaud:** Honourable senators, it would probably be hard for me to swear that I will say exactly the same thing I said a moment ago. I think I was saying that, following Senator Kinsella's remarks, since the message you were reading will only be taken into consideration at the next sitting of the Senate, we could dispense with the reading of it, and you could be excused from reading it in both official languages. I would be prepared to accept the suggestion of my honourable colleague, who proposed that the sitting be suspended until 3 p.m., when the bells will ring to call the senators to a vote at 3:30 p.m. Suspending our sitting would avoid interrupting a senator wrapped up in an impassioned speech and making him lose his train of thought.



I see that the honourable senators indicate that I should continue. By hand signals, they appear to be indicating their agreement that the sitting should be suspended. As I said before, I cannot swear categorically that that is exactly what I said when you pointed out that you did not have your earpiece, and you asked me to repeat what I had said. However, if it is not clear, I could perhaps try to say a third time what I have tried to explain twice.

Honourable senators, I would not want to try the patience of my honourable colleagues because their understanding is incomparable, and they wish everything in this chamber to work smoothly. In fact, they are always ready to cooperate.

I see an honourable senator signalling that I have four minutes remaining. I do not think that I could continue to explain what I was trying to explain during all that time, because what I said at the beginning took only one minute to say. I would not want to try the patience of the honourable senators.

If it were necessary to continue discussing suspending the sitting, I could present a motion proposing suspension of the sitting so that the honourable senators could speak until the bells are to be rung. And if I were to present a motion to this effect, it could be debated, so that if everyone wished to express an opinion on the merits of the motion, it would certainly take us until 3 p.m.

I think I shall leave some time for other honourable senators to discuss the motion I would like to propose. Honourable senators, I invite you to listen to someone else on this subject. If not, I would propose a motion and we could begin the debate.

[English]

**Senator Kinsella:** Honourable senators, I was simply about to suggest that the house might deem the time to be three o'clock.

**The Hon. the Speaker:** Honourable senators, Senator Robichaud and Senator Kinsella have had an interesting exchange on a matter of house business, and I have listened carefully. It would be my duty to ask whether there is unanimous consent to proceed, as has been outlined by Senator Robichaud.

## BUSINESS OF THE SENATE

**The Hon. the Speaker:** However, it now being three o'clock, pursuant to the order adopted by the Senate on September 25, 2003, it is my duty to interrupt our proceedings for the purpose of calling in the senators for the recorded vote on Senator Murray's amendment to Bill C-25.

• (1530)

## ORDERS OF THE DAY

### PUBLIC SERVICE MODERNIZATION BILL

#### THIRD READING— MOTION IN AMENDMENT NEGATIVED

On the Order:

Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Harb, for the third reading of Bill C-25, to modernize employment and labour relations in the public service and to amend the Financial Administration Act and the Canadian Centre for Management Development Act and to make consequential amendments to other Acts.

And on the motion in amendment of the Honourable Senator Murray, P.C., seconded by the Honourable Senator Oliver, that the Bill be not now read a third time but that it be amended in clause 12,

(a) on page 145, by replacing line 20, with the following:

“(5) The Governor in Council shall designate, after approval by resolution of the Senate and House of Commons,”; and

(b) on page 151, by replacing lines 20 to 31, with the following:

“110. (1) The Chairperson shall, as soon as possible after the end of each fiscal year, submit an annual report to Parliament on the activities of the Tribunal during that fiscal year.

(2) The Chairperson may, at any time, make a special report to Parliament referring to and commenting on any matter within the scope of the powers and functions of the Tribunal where, in the opinion of the Chairperson, the matter is of such urgency or importance that a report on it should not be deferred until the time provided for transmission of the next annual report of the Tribunal.”; and

(c) on page 168, by replacing line 11, with the following:

“(4) The Governor in Council shall designate, after approval by resolution of the Senate and House of Commons,”.

Motion in amendment negatived on the following division:

YEAS  
THE HONOURABLE SENATORS

Andreychuk	Lawson
Angus	LeBreton
Atkins	Lynch-Staunton
Beaudoin	Meighen
Carney	Murray
Comeau	Nolin
Doody	Prud'homme
Gustafson	Roche
Kelleher	St. Germain
Keon	Stratton
Kinsella	Tkachuk—22

NAYS  
THE HONOURABLE SENATORS

Austin	Jaffer
Bacon	Joyal
Banks	Kenny
Biron	Kroft
Callbeck	Lapointe
Carstairs	Lavigne
Chalifoux	Léger
Chaput	Losier-Cool
Christensen	Mahovlich
Cook	Massicotte
Corbin	Milne
Cordy	Moore
Day	Morin
De Bané	Poulin
Finnerty	Poy
Furey	Ringuette
Gauthier	Robichaud
Gill	Rompkey
Grafstein	Smith
Graham	Trenholme Counsell
Harb	Watt
Hubley	Wiebe—44

ABSTENTIONS  
THE HONOURABLE SENATORS

Plamondon — 1

[Translation]

**Hon. Madeleine Plamondon:** Honourable senators, I would like to explain my abstention. I was recently appointed to the Senate and I am not really aware of the context or the discussions around Bill C-25.

[English]

CRIMINAL CODE

BILL TO AMEND—MESSAGE FROM COMMONS

**The Hon. the Speaker:** Honourable senator, I was in the process of reading a message from the House. I believe that the exchange on house business that occurred at that time is no longer in play. Accordingly, I will read the message from the House, unless any other senator rises to differ.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I had risen to recommend that the text be not now read, because it has been circulated, and that we have a day or two to read it since it is not on the Order Paper until tomorrow. I recommend that we dispense with the reading of that text at this time.

• (1540)

**The Hon. the Speaker:** Honourable senators, I will put it and ask for leave. There are senators who wish to intervene.

**Hon. Anne C. Cools:** Honourable senators, I wonder about the propriety of not reading the message today. His Honour obviously is the recipient of the message from the Commons and has a duty to read it to the house because our record is oral and receives only that which is spoken. Granted, the message may be considered tomorrow, but this house has not yet taken a decision to deal with it. One cannot rise and fall at the same time. The message has to be received by the Senate. It has to be read to us. His Honour must do his duty and read the message to this house, after which honourable senators may then take a decision as to whether it will be considered and when it will be considered.

**Hon. Eymard G. Corbin:** I want to be clear about the status of the message in our official record. Earlier, Senator Robichaud suggested that the message be tabled. Honourable senators are now saying that we dispense with the reading of the message. Will the message be put in the *Journals of the Senate*? Where else would it be put if it is not read before the house?

**The Hon. the Speaker:** Honourable senators, I believe I can end this debate. Senator Cools' point is a good one. In any event, we require unanimous consent and so I will read the message.

**Senator Cools:** Your Honour, the message cannot be recorded. Senator Corbin's question is quite accurate because a message from the House of Commons cannot be recorded; rather, it must be read.

**The Hon. the Speaker:** For the sake of clarity, I will read the message from the beginning.

I have the honour to inform the Senate that a message has been received from the House of Commons in the following words:

Monday, September 29, 2003

ORDERED—That a message be sent to the Senate to acquaint their Honours that, with respect to Bill C-10B, An Act to amend the Criminal Code (cruelty to animals), this House continues to disagree with the Senate's insistence on amendment numbered 2 and disagrees with the Senate's amendments numbered 3 and 4. This House notes that there is agreement in both Houses on the need for cruelty to animals legislation to continue to recognize reasonable and generally accepted practices involving animals. After careful consideration, this House remains convinced that the Bill should be passed in the form it approved on June 6, 2003.



(1) This House does not agree with the amendment numbered 2 (replace “kills without lawful excuse” with “causes unnecessary death”), on which the Senate is insisting. This House is of the view that the defence of “without lawful excuse” has been interpreted by the case law as a flexible, broad defence that is commonly employed in the Criminal Code of Canada. It has been the subject of interpretation by Courts for many years, and is now well understood and fairly and consistently applied by courts in criminal trials. This defence has a longstanding presence in the Criminal Code, including being available since 1953 for the offence of killing animals that are kept for a lawful purpose. The House is convinced that the defence of “lawful excuse” offers clear and sufficient protection for lawful purposes for killing animals. There are no authorities that suggest that this defence is unclear or does not cover the range of situations to which it is meant to apply. For all of these reasons, this House remains convinced that maintaining the defence of “lawful excuse” in relation to offences for killing animals continues to be the best and most appropriate manner of safeguarding the legality of purposes for which animals are commonly killed.

The House disagrees with the Senate that the proposed amendment would provide better protection for legitimate activities. The House is of the view that the amendment would not bring any added clarity, and would give rise to confusion. The term “unnecessary” has been judicially interpreted to comprise two main components: (a) a lawful purpose for interacting with an animal, and (b) a requirement to use reasonable and proportionate means of accomplishing the objective (i.e. choice of means that do not cause avoidable pain). Only the first part of the legal test for “unnecessary” is relevant to offences of killing, namely whether there is a lawful purpose. It has been the law for many decades that persons who kill an animal without a lawful excuse are guilty of an offence. It has also been the law since 1953 that if they kill the animal with a lawful excuse, but in the course of doing so cause unnecessary pain, they are guilty of a second, separate offence. To collapse the elements of these two different offences into one will invite a re-interpretation of the well-developed test of “unnecessary” and will add confusion, rather than clarity, to the law.

(2) This House does not agree with the modified version of amendment numbered 3 (creating a defence for traditional aboriginal practices), on which the Senate is insisting. This House appreciates the recent clarification of an ambiguous component of the amendment, and agrees with the Senate that traditional aboriginal practices that cause “no more pain than is reasonably necessary” should be lawful. However, this House does not agree that the proposed amendment is necessary. Aboriginal practices that do not cause unnecessary pain are not currently offences and will not become offences under the Bill. This House believes that the Bill, as worded, already achieves the objective sought by the Senate.

This House remains convinced that creating a defence for this purpose is not legally necessary and may create unintended mischief. Any act that has a legitimate purpose and does not cause unnecessary pain does not fall within the

definition of the crime, and cannot be the subject of an offence. A defence only applies where the conduct actually falls within the definition of the crime and is excused for other reasons. It is illogical and confusing to create a defence for actions that do not constitute a crime. More specifically, as causing unnecessary pain is not a crime, it is not meaningful to create a defence for Aboriginal persons who cause no more pain than is reasonably necessary. In addition, there is no need to mention aboriginal practices specifically; the law is already flexible enough to consider all fact situations and contexts.

The House remains convinced that the wording and effect of the amendment are ambiguous and unclear. For example, there is no clarity as to what “traditional practices” are in the criminal law context and whether there is sufficient clarity to guide the police in their law enforcement duties. In the absence of a demonstrated need for clarification in the law, this amendment could also create mischief by generating a different test for liability for Aboriginal persons. This House does not believe that the law would be improved by creating a defence that is legally unnecessary and has the potential to confuse, rather than clarify, the interpretation of the offences.

(3) This House does not agree with the amended version of amendment numbered 4 (the defences in subsection 429(2)). The defences of legal justification, excuse and colour of right set out in subsection 429(2) of the Criminal Code are applicable to a multitude of different kinds of offences including offences of animal cruelty. The defences apply differently depending on the elements of the offence under consideration. The phrase “to the extent that they are relevant” is included to indicate to the courts that the Bill is not intended to change the defences that are currently relevant to animal cruelty offences, or the way that they apply. It makes clear that the intention is to maintain the current availability and interpretation of defences, and not to alter it. This phrase sends a clear message to the courts that in any and all cases where the defences are currently relevant, they continue to be. Whether a particular defence is relevant will depend on the specific circumstance of each case. The phrase guarantees an accused access to these defences when they are relevant; it does not in any way limit access to defences that are relevant on the facts of the case. For these reasons, the House does not agree with the amended amendment proposed by the Senate.

ATTEST

The Clerk of the House of Commons

• (1600)

[Translation]

Honourable senators, when shall this message be taken into consideration?

On the motion of Senator Robichaud, consideration of the message is placed on the Orders of the Day of the next sitting of the Senate.

## POINT OF ORDER

**Hon. Pierre Claude Nolin:** Honourable Senators, allow me to rise on a point of order. I thank His Honour for his patience. I am sure you know the point of order I wish to make. In good faith, most of my colleagues do not know the rule that I want to remind them of. It has to do with the use of whips to ensure that order and decorum are upheld in this House. A letter from you to our independent colleagues could remind them of the importance of maintaining this order.

Honourable senators, I remind you of section 18(5) and section 19(1) of the Rules of the Senate.

Section 18(5) reads as follows:

When the Speaker rises, all other Senators shall remain seated or shall resume their seats.

His Honour spoke for 20 minutes — and I must congratulate him on his French — but at least one quarter of this chamber did not take into account the fact that His Honour was speaking. I suspect that my colleagues did so unwittingly, out of ignorance of that section.

As for the section 19(1), it is unfortunate to often see colleagues — again, in good faith I presume — walking between His Honour and the senator who has the floor. This is a simple rule, and one I do not intend to read. I think, however, that it is important, honourable senators, to respect the Rules of the Senate as much as possible.

His Honour is a tolerant man, but I can no longer tolerate this. I have been here for some years now, and I have seen this rule broken on a number of occasions. I trust that the whips will take steps so that His Honour does not have to call honourable senators to order.

[English]

**The Hon. the Speaker:** I thank Senator Nolin for his intervention.

Honourable senators, from time to time you see me rise as your presiding officer to draw attention to similar matters, and I think it carries even greater weight when such a matter is raised by a senator not in the Chair.

I simply thank you, Senator Nolin. I commend your comments to all of our colleagues.

[Translation]

## PUBLIC SERVICE MODERNIZATION BILL

## THIRD READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Harb, for the third reading of Bill C-25, An Act to modernize

employment and labour relations in the public service and to amend the Financial Administration Act and the Canadian Centre for Management Development Act and to make consequential amendments to other Acts.

**Hon. Gérald-A. Beaudoin:** Honourable senators, early in my career I was a public servant at the Department of Justice in Ottawa.

I have always considered the competitive merit system to be appropriate and believed that merit, genuine merit, must be a fundamental principle in the public service. I still do. It must be carefully defined.

I would like to quote at this time two excerpts from the speech Senator Roch Bolduc made before the finance committee before he retired.

I fully endorse his views. Here is what he said:

What struck me a couple of days ago is that no one — at least no one other than people who have been studying the issue for years — is outraged that the merit principle is not defined. We see no mention of competitions to enter the public service, and no mention of competitions among officials to advance within the public service. In other words, the core simply is not there. We have 300 pages of procedure, but the genuine competition process, public examinations with juries and results, are simply not mentioned. We imagine that these processes will just happen by themselves. Officials are good and competent, and we can rely on them. I have a great deal of respect for the public service — I have been involved in it all my life — but human nature is what it is, and ever since the delegation of authorities in 1993, the effect of the current system has been that 80 per cent of officials are recruited any old way. That is how it works. They are recruited as temporary employees, and eventually become permanent employees.

This is not how we built up the quality public service we have at the Department of Foreign Affairs and at the Department of Finance. As a member of the Standing Committee on National Finance and the Committee on Foreign Affairs, I have dealt primarily with people from Foreign Affairs and Finance. Those are the officials I know best. This is not how those departments have become what they are.

• (1610)

## MOTION IN AMENDMENT

**Hon. Gérald-A. Beaudoin:** Honourable senators, I move the following amendment:

That Bill C-25 be amended in clause 12, on page 126, by replacing lines 8 to 12 with the following:



"30. (1) Appointments by the Commission to or from within the public service shall be free from political influence and shall be made on the basis of merit by competition or by such other process of personnel selection designed to establish the relative merit of candidates as the Commission considers is in the best interests of the public service.

(1.1) Despite subsection (1), an appointment may be made on the basis of individual merit in the circumstances prescribed by the regulations of the Commission.

(2) An appointment is made on the basis of individual".

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion in amendment?

On motion of Senator Comeau, debate adjourned.

### COPYRIGHT ACT

#### BILL TO AMEND—SECOND READING— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Gill, for the second reading of Bill S-20, to amend the Copyright Act.—(Honourable Senator Beaudoin).

**Hon. Gérard-A. Beaudoin:** Honourable senators, I am pleased to say a few words on the subject of Bill S-20, to amend the Copyright Act.

A good number of senators have already spoken to this bill, and many have asked questions. There is a good reason: one always thinks that copyright is a simple matter, but it is not; it is complex.

As you know, copyright is in the exclusive jurisdiction of the Parliament of Canada under section 91(23) of the Constitution Act, 1867. Although there are not many legal precedents dealing with the scope of section 91(23), it is still a major legislative jurisdiction. In particular, this jurisdiction enables the federal Parliament to intervene in matters of culture. Copyright is also part of federal jurisdiction in terms of intellectual property, a field not unrelated to culture, in which one finds patents.

The purpose of Bill S-20 was described very well by Senator Day. Essentially, it consists of repealing the exception by which the owner of a photograph is deemed to be its author. There is a presumption that the owner of the photograph is its author, but this assumption does not always correspond to reality. At present, a person other than the creator of a work, in this case a photograph, can be the owner; that is what the Copyright Act says and what Bill S-20 proposes to correct.

One may wonder what took so long to propose corrections. I could begin by saying that creators were perhaps the first to see what was involved. We are living in an increasingly artistic world. But we are also seeing cameras everywhere. It was time we thought about the rights of photographers. The time has come to discuss professional photographers and amateur photographers in greater detail. Both must be addressed.

It goes without saying that, like any creators, photographers should be entitled to the rights and privileges accorded to authors of copyrighted work. As Senator Day indicated, similar restrictions were corrected in the United States in 1976, and in the United Kingdom in 1988.

• (1620)

Our legislation, which is inspired by that of the United Kingdom, should also be amended in accordance with Bill S-20. Incidentally, in 2002, in *Théberge v. Galerie d'Art Petit Champlain inc.*, the Supreme Court of Canada — I found only two decisions, but that should be enough — stated the following:

Canada has adhered to the *Berne Convention for the Protection of Literary and Artistic Works* (1886) and subsequent revisions and additions, and other international treaties on the subject including the *Universal Copyright Convention* (1952), Can. T.S. 1962 No. 13. In light of the globalization of the so-called "cultural industries", it is desirable, within the limits permitted by our own legislation, to harmonize our interpretation of copyright protection with other like-minded jurisdictions.

In the decision rendered in March 2003 in *Desputeaux v. Éditions Chouette (1987) inc.*, the Supreme Court of Canada indicates that we must not underestimate the importance of the economic aspects of copyright in Canada. It also likens these rights to moral rights. Justice Louis LeBel, on behalf of the Supreme Court, wrote the following:

Parliament has indeed declared that moral rights may not be assigned, but it permits the holders of those rights to waive the exercise of them. The Canadian legislation therefore recognizes the overlap between economic rights and moral rights in the definition of copyright. This Court has in fact stressed the importance placed on the economic aspects of copyright in Canada: the Copyright Act deals with copyright primarily as a system designed to organize the economic management of intellectual property, and regards copyright primarily as a mechanism for protecting and transmitting the economic values associated with this type of property and with the use of it.

By putting all artists on an equal footing, Bill S-20 also ensures that this objective is achieved: recognizing the commercial value of a photograph while not putting photographers at an economic disadvantage.

I am pleased with this debate. At the appropriate time, this issue should be referred to a senate committee for closer consideration.

Honourable senators, I support the principle of Bill S-20.

[English]

**Hon. Tommy Banks:** Honourable senators, I wish to echo everything that Senator Beaudoin has said. He pointed out a very important aspect of this bill, and that is the consistency with respect to the treatment of creations by their creators as regards the international conventions to which our country is signatory. It is long overdue that we make this correction if it were only for those purposes alone, but there are other purposes that have been referred to by others. Copyright is very simple in that it is simply the right to copy, but there are many layers of copyright in any work. The application of the principle of a moral right to the work of photographers, as has been applied to the work of every other kind of creative artist, is long overdue in this country.

Honourable senators, we are well advised to be considering this matter now, sooner rather than later. I anticipate there will be a motion to send this bill to committee, as Senator Beaudoin has suggested, and I urge all honourable senators to do so with alacrity.

On motion of Senator Nolin, debate adjourned.

## CONSTITUTION ACT, 1867 PARLIAMENT OF CANADA ACT

### BILL TO AMEND—SECOND READING— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Oliver, seconded by the Honourable Senator Stratton, for the second reading of Bill S-16, to amend the Constitution Act, 1867 and the Parliament of Canada Act (Speakership of the Senate).—(*Honourable Senator Joyal, P.C.*)

**Hon. Serge Joyal:** Honourable senators, I wish to speak this afternoon on Bill S-16, which is a very important bill introduced by our honourable friend Senator Oliver.

Bill S-16, a copy of which senators will certainly have in their bookbinders, attempts to do two things. It would change the appointment process of our Speaker from the current system, which is by appointment through Governor in Council, to a selection process that would be similar to the one followed in the House of Commons — that is, a secret ballot among senators to choose the Speaker.

Bill S-16 would also restrict the voting rights of the Speaker to breaking a tie vote. That means that the only time the Speaker could vote would be in this rare scenario. Presently, our Speaker does break tie votes because he votes on every question.

This bill is very important, honourable senators, because the status of our Speaker is rooted in one of the five principles of our institution. Our institution was endowed by the Fathers of Confederation with five institutional characteristics.

The first characteristic is independence. Our house was intended to be fully independent from the other place and, of course, from the executive. This is very clear in the Confederation debates. Once a senator is appointed, he or she does not face re-election, and they are appointed up to age 75. Governments may come and go, but we remain at least until age 75. In the other place, each electoral cycle brings a new wave of members. In fact, statistics show that every eight or nine years, two-thirds of the members in the other place are replaced. The statistical data is available in the book that we released last May. This first institutional characteristic of the Senate, independence, has implications for the status of our Speaker, and I will come back to this point later.

The second characteristic of this chamber is that of a long-term perspective. Senators bring a long-term perspective to the study and debate of legislation. The fact that our mandate is not tied to an electoral cycle of three or four years ensures that Parliament has a long-term view on all federal legislation.

The third institutional characteristic is continuity. Senators are the institutional memory of Parliament, which I think is obvious in much of the legislation that we pass here because we remember how we dealt with an issue five, 10 or maybe even 20 years previously. This is very important, especially when dealing with such fundamental questions as minority rights.

The fourth characteristic of the Senate is the professional and life experience of its members. The Constitution provides that senators must be at least 30 years old; and convention requires that we be accomplished and reputable citizens; that we have life experience or professional experience commending us to this chamber.

The fifth and final characteristic is our representative role. We are appointed on a regional basis.

• (1630)

I would like to underscore to honourable senators today why the Speaker exercises a very important role in our institution. The Speaker represents our institution. He is in some ways the embodiment of our institution. He is our representative, for instance, when there is a legal proceeding affecting the rights and privileges of the Senate.

All honourable senators know that the Senate is currently reviewing an issue that might, at some point, require our Speaker to defend the rights of this chamber before the Supreme Court of Canada, in the same way that the Speaker of the Nova Scotia legislature did in the 1993 landmark *Donahoe* decision of the Supreme Court. So the Speaker is very important because he is the embodiment of our legislative chamber.

All honourable senators will remember that our legislative chamber is equal to the other place. This must be clearly understood. On June 5 earlier this year during the debate on Bill C-39, I rose in this chamber, as did Senator Kinsella, to draw the attention of honourable senators to the fact that the bill treated our Speaker differently than it treated the Speaker of the other place. It was an affront to the principle of equality between our two chambers. However, that is not what is at stake today.



What is at stake today is the status of our Speaker within this chamber. It is very important that we examine ourselves on this issue. Our Speaker is appointed through the Governor General in Council. That is what the Constitution says. Section 34 of the Constitution Act, 1867 states the following:

The Governor General may from Time to Time, by Instrument under the Great Seal of Canada, appoint a Senator to be Speaker of the Senate, and may remove him and appoint another in his Stead.

In other words, it is the Governor General in Council. The Governor General in Council, as we understand it, is the government of the day through the Prime Minister, who advises the Governor General on the choice of Speaker. The government of the day can decide to remove the Speaker at any time. It is not our prerogative; it is up to the government of the day. At least that is what the Constitution Act, 1867 states at section 34.

The bill proposed to us by Senator Oliver is very attractive. It is attractive because it proposes to select our Speaker in the same way as the Speaker in the other place is chosen. However, when we look carefully into our Constitution, there are many constitutional hurdles involved which Senator Oliver's proposal must pass. Senator Oliver's proposal assumes that section 34 of the Constitution Act, 1867 could be amended on the basis of section 44 of the Constitution Act, 1982, which allows Parliament to amend the Constitution without provincial approval, in purely federal matters. It is on that basis that Senator Oliver proposes to amend the appointment provision for our Speaker. Section 44 of the Constitution Act, 1982 says quite clearly that Parliament can amend its own Constitution.

Senator Oliver says that since we have the capacity to amend our own Constitution as a federal Parliament, where the powers of the Senate or the powers of the House of Commons are involved, that because the Speaker is part of that, Parliament alone can amend this part of the Constitution.

As attractive as that is, honourable senators, I find that it is a last reading of section 34. Section 34 refers to the Governor General in Council. The Governor General in Council is the Governor General, under the advice of the cabinet, which is the Council of the Governor General, the Prime Minister and his ministers.

When we look further into the Constitution Act of 1982, paragraph 41(a), we see that in order to amend the office of the Governor General, we need the consent of both Houses of Parliament, and, honourable senators, the 10 concurring provinces. It is unanimity. Paragraph 41(a) clearly mentions "the office of the Governor General." What is the office of the Governor General? That is key to understanding this issue. It is not the physical premises with the furniture. That is not what we mean by the word "office." Here, "office" means the constitutional responsibility that is vested in the person of the Governor General.

In other words, if we were to change the powers of the Governor General under the Constitution, such as her power to appoint our Speaker, we would have to go through the heaviest amending formula of the Constitution, and my colleague Senator Beaudoin would concur with me that it is the unanimity rule. As one might say, this will not be done tomorrow.

There is another problem in relation to the bill. If we are to amend the power of the Governor General in relation to the appointment of our Speaker, it might require Royal Consent because we are affecting the Governor in Council. This bill is a private member's bill. It does not include any Royal Consent. We all know what is involved in Royal Consent; it would have to be signified to us at a point in time before we vote on third reading. This is not something that should prevent us from studying the proposal; however, the proposal could be sent to the Rules Committee or the Legal and Constitutional Affairs Committee. We could hear witnesses, reflect and debate, and only at the last step of the bill would we need Royal Consent. That would not be a point of contention among us. There are many rulings of our Honourable Speaker on this issue.

Could we change the provision of the Constitution by which the Speaker is selected?

**Senator Prud'homme:** Yes.

**Senator Joyal:** Senator Austin has an original proposal. What did Senator Austin say? Senator Austin said "Maybe we should pass a resolution."

**Senator Prud'homme:** Exactly.

**Senator Joyal:** We should pass a resolution requesting that the Governor General in Council appoint a Speaker chosen by senators through a secret ballot. This approach would avoid the constitutional requirement of provincial unanimity that we would likely face by attempting to alter the power of the Governor General.

I thought twice, honourable senators, about the proposal of Senator Austin. I feel there is also a constitutional problem with this suggestion. Section 34 states that it is the Governor General in Council who appoints the Speaker. Who is the Governor in Council? Who gives advice to the Governor in Council? It is very clear: It is the Prime Minister through cabinet. The Constitution provides, by convention, that the only authority competent to advise the Governor General is the Prime Minister and his cabinet. We cannot substitute the advice of the Prime Minister with the advice of senators. Our Constitution does not provide for that.

In other words, if we were to adopt the proposal of Senator Austin, we would be altering a constitutional convention that is binding and that has implications on many other sections of our Constitution involving the powers of the Governor in Council to appoint judges, for example. There is no substitute for this essential conventional power exercised exclusively by members of the Privy Council. One must be a Privy Councillor to give advice to the Governor General when it is clearly provided in the

Constitution that the responsibility comes from the Governor in Council. We sit as senators; we do not sit as Privy Councillors. Some of us may be or might have been Privy Councillors, but the Senate is not the house of the Privy Council. We are not all in the cabinet, in other words.

• (1640)

This is an issue that we must address fundamentally if we are to change the appointment process of our Speaker. Our Constitution must be taken as a logical framework. When our Speaker is appointed by the Governor in Council, the Speaker does not have the power to break a tie vote in our chamber. That is what the Constitution provides and that is what our rules provide. Our rules provide that if the Speaker wants to vote, he must vote first. He is equal to any one of us. He has one vote.

In the other place, the Speaker does not vote, except in the case of a tie. Honourable senators will remember that that happened two weeks ago. Many of us saw it on television. It is a very rare occurrence in the other place.

In other words, honourable senators, our Speaker, even though he is appointed by the government of the day, does not have any additional voting power. His vote is as decisive as that of any other senator.

**The Hon. the Speaker:** Senator Joyal, I truly regret to advise that your time has expired.

**Senator Joyal:** I would seek further time.

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

**Senator Joyal:** I thank honourable senators for their indulgence.

Another aspect of our chamber that is different from the other place relates to the power of our Speaker to issue rulings. That is fundamentally different from the powers enjoyed by the Speaker of the other place. In the other place a decision of the Speaker cannot be appealed. Once he or she has ruled, that is the last word. Our rules provide that, under rule 18, subsection 4, the decision of the Speaker can be appealed. In other words, because our Speaker is an appointee of the government of the day, two safeguards exist to maintain our capacity to remain master of our own rules. First, the Speaker votes before us. Second, his or her decisions are appealable. In other words, the Senate can reverse them.

Before we change the status of our Speaker, honourable senators, we must understand the architecture of our institution insofar as the Speaker is concerned. These issues were well thought out and well canvassed by those who were here before us. We are not the first to consider them.

[Translation]

The status of our Speaker was determined over 137 years ago. Why? Because, before Confederation, our Speaker was elected by the legislative councillors.

[English]

I wish to remind honourable senators that before Confederation the Speaker of the previous legislative council — our ancestor — was elected by the legislative councillors. I wish to quote Bourinot, pages 38-39, in the 1892 edition:

The Speaker was appointed by the Crown from the Council until 1862, when he was elected by members from among their number. The first election took place on March 20, 1862, when Sir Allan McNab was chosen Speaker.

Why was he elected among legislative councillors in 1862? The chief reason is that, back in the day, the majority of the legislative councillors were themselves elected. One can readily see the logic in this system. When a legislative body is elected, it has the right to elect its speaker. When a legislative body is appointed, so too is its speaker. As I said before, the speaker is the embodiment of the chamber.

The rationale is there. We might not agree with it; we might want to change the system, but we must operate within it. I believe that Senator Oliver has done us all a service in bringing this issue to our attention. However, I suggest to honourable senators that we should refer Senator Oliver's bill to the Legal and Constitutional Affairs Committee or to the Rules Committee to canvass all those aspects, all these questions I have raised because, as I suggested to honourable senators, we are dealing with fundamental constitutional issues; very important institutional issues. If we are to support such an important change to our institution, we must, as our ancestor Sir John A. Macdonald said, devote sober second thought to this debate.

Honourable senators, this is a very serious issue. While it may seem to be straightforward at first glance, it is not simple. When we scratch some of the sections of our Constitution, we find more and more problems. If we have a concern, we should do the right thing.

I thank Honourable Senator Oliver. I am indebted to him for having given us a chance to reflect upon this matter, but I hope that we will be able to devote the time and study required to properly assess all the points raised by this proposed legislation on the selection of our Speaker.

**Hon. John Lynch-Staunton (Leader of the Opposition):** I should like to ask Senator Joyal a question. He has left me with the impression that he is arguing that because the Speaker of the Senate votes first, although only occasionally or even rarely, and because his decisions can be appealed, he has an independent status. I, for one, fail to see it. Have I misinterpreted what the honourable senator has said?

[ Senator Joyal ]



My view is that no matter who the Speaker is, under the present system he or she is strictly a political appointee, beholden to the government or the Prime Minister appointing him or her. No matter which party is in power, that is a fact, as far as I am concerned.

Second, the Speaker votes first, usually in a situation where the result of the vote is expected to be very close and, therefore, that vote is needed. It is not because of persuasion; it is because a vote is needed and the vote always goes to the government side. I know of no Speaker in the Senate who voted with the opposition. He or she who did so would not have lasted long in that job.

The fact that his or her opinions can be appealed is because previous Speakers have been accused of too much political content in their opinions. We remember during the GST debate what Speaker Charbonneau went through. I will not argue the merits or demerits of the opinions, but I do remember at the time that the Liberals were arguing that he was too influenced by the need to get a certain bill through. Other Speakers have also been accused of the same thing — not as flamboyantly nor as passionately as at that time, perhaps, but it has been done.

All of this is to say that at the present time, the Speaker is a political appointee with a political mission. I have nothing against that, but I much prefer Senator Oliver's bill, which would take the Speaker out of that political atmosphere as much as possible. I might add that I know of Speakers who have, on occasion, attended their local or national caucus. That again confirms the political loyalty that the individual has and continues to maintain.

(1650)

To continue in the present system, one must accept that the speaker in the chair, as speaker, has a political mission. Senator Oliver's bill would remove that position and give the individual more true independence.

**Senator Joyal:** I thank the honourable senator for his question, which raises an important point. We may wish to change the system as the objective of the bill proposes but we must first meet the constitutional test that I raised in my short speech. We may wish, as the honourable senator properly indicated, to place the Speaker of the Senate beyond any presumed or alleged influence by the government, such as the selection process contemplated by this bill. That is not the point however. When Senator Oliver asked if I would second Bill S-16, I said that I would be happy to do so but that we should look into the intricacies involved in achieving those objectives. Senator Austin proposed another way to try to achieve the desired results through the conventional route but even that approach faces constitutional hurdles. I will be clear: I am not opposed to the objectives sought by the Honourable Senator Oliver. I merely raise the constitutional issues this bill must face sooner or later.

The honourable senator raised the point that our Speaker's decisions are subject to appeal, allowing the Senate to remain, to some extent, the master of its own procedure. If, as the honourable senator proposes, the Speaker were to make a ruling that were to be seen by the house as partisan or government-influenced, the house would have the authority to

appeal that decision. Honourable senators have the capacity to reflect and vote upon rulings of the Speaker, providing the Senate with a means to show dissatisfaction with the decisions of the Speaker. The Senate has had such votes, as honourable senators will recall.

At least we have that capacity. The situation could arise whereby the Speaker, appointed by the Governor in Council — the government of the day — may be in a minority position in the Senate because of a change in government. That has happened. Senator Charbonneau, as honourable senators will recall, was acting Speaker for a period of time during which the government was in a minority position in the Senate. It was also the case for this government for some time after its election in 1993. The Speaker in this position plays a key role: to maintain the credibility of the debate process. There is no question about that.

The honourable senator is absolutely right when he says that if a Speaker engages in partisan activities, such as attending caucus, party functions or other activities that are seen as partisan, there is no doubt that it would tarnish his reputation as the guardian of decorum and impartiality.

We must never forget that the Senate is a chamber of conflicting viewpoints which are the basis of our democratic system. That is why we sit in this chamber with one party facing the other, with the Speaker in the middle above the fray. It is fundamental to the credibility of the Senate that debates be conducted in a process that is fair, and the Speaker has a paramount role to play in ensuring the integrity of debate through his or her rulings.

Honourable senators, I am not opposed to the objective of improving the current method of selecting a Speaker. However, we must do it in such a way as to remain conscious of all the elements that are at stake in the endeavour. Essentially, that is my purpose in the chamber today. I propose that we have a thorough examination of the issue at the Rules Committee or at the Legal and Constitutional Affairs Committee. That would provide an opportunity for senators to consider the input of those with long experience in this chamber in an effort to avoid situations that we do not wish to repeat. This is part of the institutional memory and long-term perspective that we want to bring to the debate on this issue.

**Hon. Anne C. Cools:** Honourable senators, I thank Senator Joyal for his comments. I also thank Senator Oliver for his intentions in this bill, which are to find a way to make choices for the Speaker that are truly representative of the house as a whole. However, I think Bill S-16 has enormous problems.

I would like to ask Senator Joyal a couple of questions. He led me to believe that the Speaker of the Senate is appointed by an Order in Council — a Governor in Council appointment. That is not my understanding at all. My understanding is that the Speaker of the Senate is appointed under the Great Seal by the Queen's representative herself, the Governor General. It is a different instrument. We must understand that the Speaker of the Senate is not the Senate's man. The Speaker of the House of Commons is the House of Commons' man, but the Speaker of the Senate is the King's man, because the Senate — the upper chamber — is the House of the Parliaments, just as the Clerk of

the Senate is the Clerk of the Parliaments. The Clerk of the House of Commons is the under-clerk of the Parliaments. The Senate is the upper chamber. The Senate is the only one of the two chambers in which the three estates of Parliament can assemble; being the Queen, or her representative, the Commons and the Senate. The system outlined in section 34 is intended to honour and to have fidelity to that particular constitutional fact. That is why, for example, we are not supposed to call the Speaker of the Senate "Mr. Speaker." That term belongs to the House of Commons alone.

The position of Commons Speaker evolved hundreds of years ago when the King met with the commoners and decided that, unable to speak to all of them at the same time, they should choose one of their own as spokesman to him. In all fairness, for 100-odd years in this country, the Commons Speaker was chosen by government, by a process of government motion.

My question is for the Honourable Senator Joyal: How is it possible that Senator Oliver's bill could create the power for the appointment of the Speaker? I can understand how he is attempting to create a process for selecting a nominee for the Speaker's position. A characteristic of the two Houses of Parliament is that they have no power even to make the appointments of their own officers, such as their Clerks, their Black Rod, their Sergeant-at-Arms, et cetera. They must rely on the power of the Queen to make those appointments. It is not without reason that the system is called the Queen in Parliament — or acting with the cabinet, the Queen in her council in her Parliament. The power to actually make those appointments remains a royal power. How can that power be created by any act of Parliament? It cannot be.

• (1700)

**Senator Joyal:** Honourable senators, I think I have read section 34 properly. Section 34 of the Constitution Act, 1867, as the honourable senator has just quoted, states very clearly that the Governor General may, from time to time, by instrument under the Great Seal of Canada, appoint a senator to be Speaker of the Senate. I think that is what I read — I did not change the letter of the Constitution. It is quite clear that it is through an instrument under the Great Seal that the Speaker is appointed. When the Speaker is appointed under the Great Seal, he is appointed through the exercise of a power that is vested in the Governor General in Council; and to act, the Governor General must have the advice of the Privy Council. That is essentially what section 34 says.

I do not think we have any dispute on the constitutional implication involved in the appointment of our Speaker. I think that it is proper that we review this thoroughly, including an examination of how the Speaker in Westminster's Parliament, the House of Lords, is appointed. I think it would be helpful to look into the procedure over there. There is no doubt that when section 34 was drafted by the Fathers of Confederation, that they paid attention to this question; they were familiar with how the system of appointment changed in 1862. They opted to reinstate the appointment process through the Governor General. There is no

doubt that the issue was discussed by the Fathers of Confederation, which explains why we ended up with section 34. It was a departure from the pre-Confederation appointment process that prevailed in the Legislative Council of Canada.

**Hon. Gérald-A. Beaudoin:** I was interested, honourable senators, in speaking on this matter and on taking the adjournment, but if someone wants to ask another question, that is fine. This subject is so difficult that I prefer to be allowed to speak on it by way of a prepared speech.

**Hon. Marcel Prud'homme:** We all know that Senator Joyal is a great and knowledgeable person in these matters, but he was and still is a member of the Privy Council. I am a member of the Privy Council, by the Queen's own hand and not by way of the Governor General, but I have never been a minister. My question is simple: You keep referring to the Governor in Council, which means the Prime Minister and cabinet. To the best of your experience, having been a cabinet minister, and therefore a member of the Queen's Privy Council, were you ever consulted in cabinet when the Prime Minister decided to appoint a Speaker, or was it solely a prime ministerial decision?

**Senator Joyal:** Honourable senators, Senator Prud'homme is raising a very tricky question. It is like everything else: it always appears easy but, in fact, there is a trap. There is no doubt that when the Prime Minister and his cabinet appoints a person whose status is defined by statute or in the Constitution, what happens — and this is my personal experience — is that such appointments are discussed at the end of the cabinet meeting. There is the list of the appointees, which is submitted for advice and consent; the concurrence of the cabinet. There is no vote on this list. It is concluded after the expression of opinions around the table. In such cases where a position is by way of appointment through the Governor in Council, the name of the person would be on the list of the government appointees. The Prime Minister would say, "I intend to appoint Mr. or Senator X or Z to that position. Is there any objection?" It is then signed.

In the case of senators, as you know, the appointment of senators is governed by the Constitution. I will go back to the text — it is section 24 of the Constitution. It says:

The Governor General shall from Time to Time, in the Queen's Name, by Instrument under the Great Seal of Canada, summon qualified Persons to the Senate;

I repeat — the Governor General from time to time — it is not the Governor General in Council. What does this mean? It means that the cabinet does not have to sit to give an opinion to the Governor General to appoint someone to the Senate. What does that mean? It means that there is only one person who may advise the Governor General in the appointment of a senator: the Prime Minister.

We have to read the text very carefully, as Senator Cools has properly said, because there are many dimensions to the convention on the exercise of those powers. Honourable senators will certainly know that it is a tradition when Her Majesty visits Ottawa for her to call a meeting of the Privy



Councillors — all of them, of any political stripe. I think it is a very important tradition because it maintains the status of the Queen as head of the Privy Council. Of course, in the day-to-day administration of government, it is only the ministers of the Crown who enjoy the confidence of the House who advise on such matters. However, when Her Majesty comes to Parliament, traditionally she will meet all the Privy Councillors who have been appointed. That has been the tradition. I have attended myself, and our colleague Senator Austin, who was a Privy Councillor some years ago, has been invited to similar functions.

**Senator Corbin:** And he still is.

**Senator Joyal:** Yes, as Senator Corbin said, he still is. I will not say anything more. Senator Corbin opened the trap before me and I resisted.

However, this is an important element of the debate on this bill, honourable senators.

**Hon. Jack Austin:** Honourable senators, in the tradition of questions in this chamber, particularly the recent tradition of questions in this chamber, I would like to begin by saying that I believe the debate on the question of the method of appointment of the Speaker of the Senate is a useful and timely one. I must congratulate Senator Joyal for a very comprehensive and well-canvassed review of the issues.

(1710)

I wanted to add a tiny footnote to his knowledge in the form of a question. Is Senator Joyal aware of the 1935 Order in Council which was passed when the Right Honourable Mackenzie King first took office? That order specifically reserved the recommendation to the Prime Minister of appointments to a number of offices, including the Supreme Court of Canada, chief justices in the provinces, and senators, and others. That recommendation was reserved specifically to the Prime Minister, and only to the Prime Minister. I seek Senator Joyal's comment on this. The result is that the suggestion I made, when Senator Oliver presented the bill and made his comments on it, could run to request an amendment to that Order in Council. There is no way we can do anything in terms of the law because the law requires a constitutional change, as Senator Joyal has said. However, we could request that the Prime Minister act, with respect to the power of appointment under that Order in Council, on the advice of the Senate. Of course, this would require not an adversarial relationship with the Prime Minister of the day but an agreed process.

Again, Senator Joyal, I would like you to comment on what appears to be a change in the trend from prime ministerial to perhaps a more consensual and cabinet form of governance. As honourable senators are aware, there are a number of suggestions that would change the role of parliamentarians in dealing with the so-called democratic deficit expressed in terms of parliamentary practice.

When the appropriate committee deals with Bill C-16, does Senator Joyal think it would be appropriate for the committee to

look at the larger issue of parliamentary authority and the appointment to various offices by Parliament in the context of this particular bill?

**Senator Joyal:** Honourable senators, I thank Senator Austin for his question. It brought to my mind a lot of suggestions and comments that have been made, especially this past summer, on the appointment of senators.

Honourable senators will recall that, last summer, about mid-August, an article was published on this issue in *Maclean's* magazine. I cannot give the date but I think you will all remember it. That article suggested that senators be appointed from a list provided by the provinces. It was circulated, commented upon and abundantly reported. That struck me because, of course, as I said earlier, senators are appointed by the Governor General, not in council and, as Senator Austin has just reminded us, on the advice of the Prime Minister alone. In other words, the Prime Minister consults himself, with himself, by himself, and then calls the Governor General with the news. There is no doubt that the Prime Minister owes anyone an explanation in the exercise of this conventional power.

As Senator Austin just mentioned, in the case of senators, the proposal that was floated last summer defies the logic of our Constitution. Why? Because it would bind the Prime Minister in a way that would transfer the practical exercise of his power of appointment into the hands of the provincial premiers. I remind you of, the Supreme Court of Canada's landmark reference in 1980. I wonder if we have senators in this chamber who were here in 1979 when that key decision of the Supreme Court on the status of our institution was made public? Senator Graham was here and I am sure there are others. If I were a professor talking to students about the Senate, I would refer to the Supreme Court reference of 1980 as required reading — "Senate 101" if you like

At page 77 of that decision, the Supreme Court states clearly that any selection of senators from a list provided by provincial legislatures, or selected by legislatures themselves, would effectively be a transfer of the power of appointment to another level of government, which was not contemplated in the Constitution Act, 1867. To do so would circumvent the Constitution essentially amending it without going through the required procedure of amendment at section 38 of the Constitution Act, 1982.

Senator Austin's proposal requires the cooperation of the Prime Minister of the day. That would be, in fact — and I use a negative word here — a framing.

[Translation]

Such a practice would frame the powers of the Prime Minister.

[English]

As I said earlier, the Prime Minister can consult whomever he wishes on the appointment of senators. There is nothing to prevent him from consulting us now. What cannot be done is the transfer of that power to another authority outside of this body.

The suggestion of Senator Austin is very appealing. I may give the impression here of advertising our book, *Protecting Canadian Democracy: The Senate You Never Knew*, published last May. Some proposals were made in the book, especially by Professor David Smith, to frame the exercise of the conventional power of the Prime Minister to advise the Governor General. I will give you some examples. The Prime Minister could issue a statement saying, "When I exercise my conventional power of appointment, I will take into account gender parity and a fair representation of our Aboriginal peoples in Canada; I will take into account a fair representation of visible minorities in Canada." We all know that the electoral system in the other place gives a distortion in terms of "representativeness" of the other place. The Prime Minister could issue a public statement saying: "Here are my objectives and my policy framework for the exercise of my power."

For instance, in the case of the Speaker, the Prime Minister could announce that he will consult with the Senate. However, we cannot simply jettison section 34 of the Constitution Act, 1867. There are many ways, in my opinion, to address this issue and to bring about improvement of the system.

On motion of Senator Beaudoin, debate adjourned.

• (1720)

## CRIMINAL CODE

### BILL TO AMEND—SECOND READING— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Joyal, P.C., seconded by the Honourable Senator Mahovlich, for the second reading of Bill C-250, to amend the Criminal Code (hate propaganda).—(*Honourable Senator Stratton*).

**Hon. Richard H. Kroft:** Honourable senators, aware of the hour and wanting to intrude on only a little of your time, I should like to address myself to the debate on second reading of Bill C-250, to amend the Criminal Code in respect of hate propaganda. In doing so, I follow some outstanding speeches, beginning with Senator Joyal, who laid out the history and significance of section 18 over the past 40 years. We have also heard important, impressive and frequently moving interventions by Senators LaPierre, Oliver and Gauthier. I wish now to add my thoughts to a debate that I believe touches on some of the most fundamental issues relating to the building and preservation of our democratic society.

We all look at our world through the lens of our own identities and experience. Human nature dictates that starting point, but as thoughtful people, and certainly for all us as senators, we must take that personal perspective and try to see where it fits in the broader context of society as a whole. Nowhere is this process more important than in issues like the one before us.

My personal point of departure is my own position as a member of a minority. Looking through my Jewish lens, I am conditioned by being part of a group that has always been a minority, in every society where Jews have lived over thousands of years. Since biblical times, only the State of Israel provides an exception to that minority condition. I begin with that personal experience and the bias it gives me.

Since everyone in this room, without exception, is in a minority at some time, in some place, in some context, this is a process we can all follow. What do I see? First, I see and appreciate how Canada has dealt with issues of minority rights and the protection of minorities from hate propaganda. I know well the story that Senator Joyal has recalled of these steps from the committee led by Professor Maxwell Cohen, through to the Charter and the Criminal Code and other legislative provisions that have created the protections we enjoy today. I would remind honourable senators that these laws did not come quickly or easily in Canada. It is a long time from Confederation to the 1980s. Remember: the battle was waged from both sides. It was not only the forces of discrimination and prejudice that slowed their coming, although most assuredly it was those that exerted the strongest force. There was also strong resistance from the other side, from those for whom unrestricted freedom of speech is simply non-negotiable.

In the United States, the first amendment to the Constitution established a base from which any restriction of speech, no matter how despicable and how based in ignorance that speech may be, is seen as a greater evil than allowing the hateful propaganda to go on. This dilemma continues to be a fundamental part of the American experience to this day and is certainly a part of legal and intellectual discourse in this country — and rightly it should be. We must never let any restraint of free expression go unchallenged, but we do so within limitations articulated in the Canadian Charter of Rights and Freedoms, in the sanctions of the Criminal Code and other legislative provisions.

What are those limitations based on? They reflect a determination by Canadians, after long and careful thought and debate, and repeatedly reinforced since their passage, that a free and democratic society demands that lines be drawn, that even a right as fundamental and cherished as the freedom of expression has limits when it comes up against our commitment to a fair and compassionate society.

Canadians have decided that there simply cannot be a democratic society, a civilized society, as we want to have it, without everyone in the society feeling and being safe in body, free from fear and with rights respected by those around them. We have decided that some carefully considered restraints on freedom of expression are a price worth paying, a price that must be paid to assure comfort and respect and dignity for all Canadians. This is the ideal — not always achieved, but this is the ideal.

All of this is what we are really talking about now as we address Bill C-250, honourable senators. We are reminding ourselves of what defines us as a nation. We are again testing ourselves to be sure that we do not sit back smugly and say that we looked after it all in the Charter and the Criminal Code as it stands. We are reminding ourselves that the Charter of Rights is not only a set of



non-negotiable standards but also a living document of principles that must be constantly sensitive to changes in society. We must be sure that our laws giving effect to the principle of the Charter are relevant and complete.

Sexual orientation was not included in the list when the present section 18 was passed. That was not because hatred directed at that group was not a problem. The reasons for its exclusion there are not really the issue now. What matters is that society has come to the point where continued exclusion of sexual orientation from section 18 is simply no longer acceptable. There is absolutely no justification for denying gay and lesbian members of our society the same respect and security that other Canadians already have.

In taking this step, we should not do so with reluctance, hesitation or regret. On the contrary, we should do so with pride and confidence that we are continuing to build our society, indeed, our civilization. This building is not complete and never will be. What keeps a civilization great is its recognition that perfection is never reached and that constant vigilance is required to assure that we constantly protect and improve what we have and that no one is left behind.

**Hon. Anne C. Cools:** I wish to ask Senator Kroft a question.

Senator Kroft referred to section 18. Bill C-250 is being described in the vernacular and colloquially as hate crimes, but this bill is amending the genocide section of the Criminal Code, section 318. This seems to be a fact that is not very well known. Yes, the title of the section is hate propaganda, but the substance and language of the statute itself is genocide. I am sure that Senator Kroft knows that very well because he stated his own "gens," so to speak, and contact with his own Hebrewness.

The term "genocide" was born roughly around the time of the Nuremberg trials. It was a new way of looking at things. Genocide really speaks to relations between peoples, particularly bad and murderous relations. Section 318 contains the genocide sections of the Criminal Code. Section 318(1) states:

318.(1) Every one who advocates or promotes genocide is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

Subsection (2) goes on to define "genocide" as follows:

(a) killing of members of the group; or

(b) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction.

Genocide is a particular horrific, frightening thing. Subsection (4), which is the subsection that Bill C-250 seeks to amend, describes the members or those persons of the public who are identifiable groups. Currently, it states:

(4) In this section "identifiable group" means any section of the public distinguished by colour, race, religion or ethnic origin.

Bill C-250 adds the term "sexual orientation" to that collection of people.

Does Senator Kroft have any thoughts on the phenomenon that this is not hate crime in any simplistic way; this is the describing of a new genocide? This is what this is. Genocide, I think, is something we should study.

Honourable senators, I do not talk about myself a lot, but I remember when I first came to Canada, I was in a part of Montreal called St. Lawrence. There were many Jewish people with stores there. As a matter of fact, the Steinberg family had started in that area. I remember being in those stores, and I saw numbers tattooed on peoples' arms. I had never seen anything like that. I remember it was explained to me what those numbers were, and what had happened. I just wonder if Senator Kroft has any thoughts on this matter.

• (1730)

Genocide is not simply murder. Genocide is murder with the intention to exterminate an entire group. I am wary of throwing words like "genocide" around, especially at some very ignorant people. They are quite often very ignorant, backward and mean. Genocide is a different matter. Does the honourable senator have any comments in that regard?

**Senator Kroft:** Honourable senators, I have given the broad subject an enormous amount of thought, but not a great deal in the context of this speech. I heard the honourable senator's comments the other day when the focus on the genocide aspect first arose. For me, while that is obviously a subject of enormous importance, we are at risk of confusing what we are doing here today.

Even though the structure of the section comes under the headings as the honourable senator has described it, today we are dealing with a much more focused and narrow subject: We are dealing with the issue of the treatment of hate-mongering and hatred expressed in various ways towards groups in our society. To try to extend our debate beyond this into a concept of genocide is beyond the intention of the section, certainly beyond the intention of the amendment, and I guarantee you beyond the intention of my intervention today.

On motion of Senator Stratton, debate adjourned.

## INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

### SIXTEENTH REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the sixteenth report of the Standing Committee on Internal Economy, Budgets and Administration (salary increase for senior management employees) presented in the Senate on September 25, 2003.—(*Honourable Senator Bacon*).

**Hon. Lise Bacon** moved the adoption of the report.

She said: Honourable senators, the report before you seeks to provide a 2.5 per cent increase to the senior executive group and middle manager salary scales retroactive to April 1, 2003 and to grant one day of personal leave per year to encompass SEG positions beginning in fiscal 2003-04.

After a review of the sixth report of its advisory committee on senior level retention and compensation, Treasury Board agreed to increase the salary scales for senior public officials by a similar amount retroactive to April 1, 2003 and to provide one day of personal leave per year, a common benefit in the external market.

[Translation]

In light of these facts, and in order to enable the Senate to make available to its staff benefits comparable to those available to their Public Service counterparts, I am asking honourable senators to support adoption of this report.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and report adopted.

## FISHERIES AND OCEANS

### BUDGET ON STUDY OF QUOTA ALLOCATIONS AND BENEFITS TO NUNAVUT AND NUNAVIK FISHERMEN—REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the sixth report of the Standing Senate Committee on Fisheries and Oceans (Budget on Study of Quota Allocations and Benefits to Nunavut and Nunavik Fishermen), presented in the Senate on September 25, 2003.—(*Honourable Senator Comeau*).

**Hon. Gerald J. Comeau:** I move adoption of this report.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and report adopted.

## HUMAN RIGHTS

### BUDGET OF STUDY OF SPECIFIC CONCERNS—REPORT OF COMMITTEE—DEBATE ADJOURNED

The Senate proceeded to consideration of the fifth report of the Standing Senate Committee on Human Rights (Budget of study to hear witnesses with specific human rights concerns), presented in the Senate on September 25, 2003.—(*Honourable Senator LaPierre*).

**Hon. Maria Chaput:** I move adoption of this report.

[English]

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, the practice here is for either the chairman or deputy chairman to be in attendance when an item requesting funds is before us. Since neither one is here, it would be preferable to adjourn the debate on this matter.

On motion of Senator Lynch-Staunton, debate adjourned.

## BANKING, TRADE AND COMMERCE

### BUDGET ON STUDY OF SPECIFIC CONCERNS—REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the thirteenth report of the Standing Senate Committee on Banking, Trade and Commerce (budget—release of additional funds (study on Bankruptcy and Insolvency)) presented in the Senate on September 25, 2003.—(*Honourable Senator Kroft*).

**Hon. Richard H. Kroft** moved the adoption of the report.

Motion agreed to and report adopted.

• (1740)

[Translation]

## THE ROLE OF CULTURE IN CANADA

### INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Gauthier calling the attention of the Senate to the important role of culture in Canada and the image that we project abroad.—(*Honourable Senator Poulin*).

**Hon. Marie-P. Poulin:** Honourable senators, I would like to take these few minutes to respond to the excellent speech delivered by our colleague, the Honourable Senator Jean-Robert Gauthier. His remarks about Canadian culture contained important points for our international image.

In his remarks, the honourable senator explained why culture should be included in Minister Stéphane Dion's plan, entitled "The Next Act: New Momentum for Canada's Linguistic Duality". As Senator Gauthier reminded us, language is an essential communication tool, but culture is what remains when everything else has been forgotten.

Honourable senators, for over thirty years, culture has been of great interest to me, both as a radio broadcaster and deputy minister responsible for the Canadian Artists and Producers Professional Relation Tribunal and now as the senator for Northern Ontario.



In the 1990s during my tenure as chair, the Standing Senate Committee on Transport and Communications drafted a report entitled "Wired to Win" on communications and telecommunications, which addressed the issue of culture in an international context. We found that new communications technologies forced us to broaden the standard definition without minimizing the importance and merits of tradition, arts and performance, literature, visual arts and music.

As a result, new communications technologies have multiplied our means to transmit our history, values, traditions, beauty and hopes. They also help us appreciate not only the works of our painters, via their virtual galleries, but also radio and television shows, print media and cinema no matter, where we are in the world.

Furthermore, new communications technologies promote our country's cultural diversity, thus enhancing our image abroad. Whatever the case, it is essential to promote the best of what Canadians have to offer. We lack neither talent nor magnanimous individuals to make a substantial contribution to our country and its international image.

On the one hand, who are today's stars in the arts? In North America, in Europe, in Asia: Céline Dion, Shania Twain, Margaret Atwood, and Denys Arcand are names that spring to mind. Our writers, singers, actors, filmmakers and producers are highly regarded on the international scene and are ambassadors of Canadian culture.

On the other hand, we have recently had an example of remarkable patronage of the arts, when Ken Thompson gave his art collection to the Royal Ontario Museum. That was a gift that will grow for generations to come.

In the winter of 2003, we commemorated a turning point in Canadian history, an event that identified us as a country. We passed legislation creating the national day of remembrance of the Battle of Vimy Ridge. I would like to tell you how proud I was when Joël Ralph, a young man of 17 from Northern Ontario, wrote this in 1999:

That morning, when our soldiers set out to storm Vimy Ridge, they were soldiers of the Commonwealth. When they reached the top, they had become Canadians.

Our history, culture and heritage are closely linked and speak volumes about Canada on the international scene.

However, despite our collective triumphs and individual successes, we have the tendency to remain rather ambivalent. I have been involved in the cultural and linguistic dynamic of our country for more than thirty years, and I continue to be amazed at our modesty.

As Senator Gauthier pointed out, Canada is dead last when it comes to promoting culture. Per capita, we spend on culture a fraction of what the French, British and Japanese do. Culture is a sound investment for the State, for companies and individuals. In the United States, banks, companies, and foundations spend millions of dollars promoting culture.

Conversely, our artists in Canada, who play a key role in promoting our image in the world, earn an average annual income of roughly \$25,000. You would have to be truly dedicated!

Honourable senators, we all agree that our international relations rest on three pillars: diplomacy, trade and defence. A fourth pillar should be added: culture.

Canada has reason to be proud of its many successes. We should proclaim our pride from our mountain tops, forests, rivers, oceans and lakes.

On motion of Senator Banks, debate adjourned.

[English]

## LABOUR SHORTAGES IN SKILL TRADES

### INQUIRY—DEBATE ADJOURNED

**Hon. Catherine S. Callbeck** rose pursuant to notice of June 4, 2003:

That she will call the attention of the Senate to the crisis of increasing labour shortages in the skilled trades.

She said: Honourable senators, it is a pleasure to rise to speak on the inquiry that stands in my name. Today, I would draw the attention of honourable senators to a serious issue that affects all Canadians, an issue that cuts across both economic and social policies, and an issue that has a major bearing on the future of Canada. I refer to the growing shortage of skilled workers in this country.

There is compelling evidence that we may be facing a national crisis. The Conference Board of Canada has said that, by 2020, Canada may be short 1 million skilled workers. The Canadian Federation of Independent Business has said that among its members, some 300,000 positions were unfilled.

The Canadian Manufacturers and Exporters report that among its members, one in three said that shortage of skilled labour was a significant barrier to expansion. That is from an organization representing an industry that accounts for 75 per cent of Canada's manufacturing output, 90 per cent of exports and 2.4 million jobs.

In my own province of Prince Edward Island, the Construction Association of Prince Edward Island has said that it is now experiencing shortages of skilled trades people. As the average age of construction workers is between 45 and 54, it is concerned about meeting future needs.

This growing shortage of skilled workers is delaying or even postponing some construction projects throughout Canada. As the number of new entrants into the trades does not equal those retiring, we can anticipate that shortages of skilled workers will continue to increase. It is also important to keep in mind that most trades require four to five years of training before full qualifications are achieved. The issue will not be resolved in the near future.

The evidence is clear, and the evidence is mounting: Canada is faced with a shortage of skilled workers, and that will have a negative impact on our economy and on Canadian society.

On a sectoral basis, there is enough evidence to suggest that skill shortages are fairly widespread throughout the economy, especially in sectors such as construction, oil and gas, and health care.

• (1750)

It is not just changing demographics that are reshaping the workforce; it is also what is required in terms of more skills. By next year, it is estimated that up to 70 per cent of jobs will require post-secondary, university or college education, or trades training.

To further compound the problem, Canada also has relatively high rates of functional illiteracy. It is estimated that there may be as many as eight million Canadians who do not have the literacy capacity to fully engage in the life of our country and its economy. I should also note that 12 per cent of Canadians do not complete high school, seriously limiting their chances of employment.

As well, increasing globalization of world markets means more competition for skilled workers, and younger people are choosing different careers from those in the trades, as they have a poorer image of the work in the trades.

As the Prime Minister stated in the paper "Knowledge Matters: Skills and Learning for Canadians":

In the new global knowledge economy of the 21st century, prosperity depends on innovation which, in turn, depends on the investments that we make in the creativity and talents of our people. We must invest not only in technology and innovation, but also in the Canadian way, to create an environment of inclusion, in which all Canadians can take advantage of their talents, their skills and their ideas.

As I have said, shortages of skilled workers are becoming more prevalent in many sectors of our economy. Today, I would address the particular problems facing Canada's growing shortage of skilled tradespeople in the construction industry and some of the steps that I believe might be taken to resolve them.

Under the Constitution, education and training is a provincial responsibility. However, under various arrangements with the provinces over the years, the federal government has actively supported training initiatives. This involvement recognized that a skilled and knowledgeable labour force was a matter of national importance.

Over the years, the federal government purchased training from the provinces, from private schools or from industry, or it

provided reimbursement to the provinces for offering training courses. However, this led to some inefficiencies and wasteful spending practices.

A report by the Auditor General in 1986 found that course purchases were largely based on budget allocations of previous years and that they were not based on any comprehensive labour market analysis or the success of trainees in securing employment.

In 1995, the Prime Minister announced that the federal government would, over a three-year period, withdraw directly from labour market measures. The new arrangements with the provinces and territories came about in 1996 when Human Resources Development Canada proposed the establishment of Labour Market Development Agreements. Under these agreements, the provinces and territories would take over the responsibility of programs funded through the Employment Insurance Account, including training. In short, the federal government withdrew from direct involvement in training. It was passed over to the provinces.

This coincided with the enactment of the Employment Insurance Act. Under this legislation, there were limits on who could apply for training. Only those people eligible for EI benefits could receive training, leaving many people without access. The ineligible would include new immigrants, people new to the labour force, people with little or no labour force involvement, and many women who may have wished to seek training in order to re-enter the labour force.

Prior to these agreements, Human Resources Development Canada had funded large active labour market programs for these groups. With budget cutbacks, the remaining resources are now directed mainly toward Aboriginal clients and youth, along with a small program for people with disabilities.

Under each of the Labour Market Development Agreements, funds are provided for programs such as wage subsidies, earning supplements, self-employment assistance, direct job creation projects and skills loans and grants. However, only people eligible for EI benefits can access these programs.

Notwithstanding this limitation, there are some benefits under this new arrangement between the federal government and the provinces and territories. Final decisions about training priorities are no longer made by the federal government. There is more flexibility in determining what is required.

However, the federal government does not have the effective means of helping to develop labour market programs that meet national needs. Total federal spending for training has been reduced.

In 1982-83, federal spending on training was approximately \$1.7 billion. This had risen by 1994-95 to \$2.7 billion. Today, the federal spending on labour market measures, including training, is \$2.2 billion. In other words, not only is total spending down, but the amount allocated to skills development or training is also significantly reduced.



I believe that it is time for the federal government to increase its support for training programs to help meet the growing skills shortages in Canada. I also believe that support for training should be extended to more people who want and need training opportunities. Our goal should be to ensure that we have a workforce that is trained and able to meet the needs of our economy.

We need to better understand the dynamics of the labour force. We need to know more about how many workers are needed, what kind of skills they should have, and where in Canada they will be required. We cannot develop good labour market strategies without good labour market information.

There also needs to be a more coordinated approach among governments at all levels, universities, colleges, training schools and industry, to develop new labour market strategies. The federal government should take the lead in such an initiative because we are dealing here with an issue of importance to all Canadians.

I am pleased that a number of steps have been taken by the federal government and others to address the issue of skills shortages. We know, for example, that many young people do not enter the trades because their perception is that the trades involve only manual work. In short, the trades have an image problem.

The industry is beginning to recognize this and is taking steps to improve this perception. Earlier this year, for example, the Construction Association of Prince Edward Island held open houses during Construction Awareness Week to highlight the opportunities available to those thinking of enrolling in a trades program.

The federal government has already taken some steps to promote skilled trades as a career. In January of this year, the Minister of Human Resources Development Canada announced a \$12 million investment to develop and promote careers in the trades.

No discussion of skills shortages can take place without reference to the important contribution that immigrants make to the economy. Our colleagues in the other place have spent a great deal of time studying this complex issue. I was pleased that last Thursday, September 18, the Minister of Citizenship and Immigration Canada announced an adjustment to the pass mark for federal skilled worker applicants. The Minister of Human Resources Development Canada had also been active in efforts to engage the country's foreign labour pool by identifying the federal Credential Recognition Program as one of the department's priorities.

Perhaps one of the best methods of addressing skilled trades shortages in Canada is to strengthen the apprenticeship system. The apprenticeship system is an excellent means of providing skilled workers to the workforce. It is a great model of business and education working effectively together.

**The Hon. the Speaker:** I am sorry to interrupt, but it is six o'clock.

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I would suggest that we not see the clock.

**The Hon. the Speaker:** Is it agreed, honourable senators, that we not see the clock?

**Hon. Senators:** Agreed.

**Senator Callbeck:** However, there is evidence that it is not working as well as it should. Only 1 per cent of all Canadian workers have gone through an apprenticeship. That is compared to 6 per cent in Germany. There is also a very high dropout rate. Human Resources Development Canada estimates that 30,000 people begin trades training every year but only 17,000 actually complete the program. HRDC also estimates a need for 37,000 apprenticeships coming out of the system by the end of the next decade.

• (1800)

We must do more to encourage apprenticeships. I am pleased to note that the federal government, in its last budget, introduced changes to EI rules for apprentices. In the past, apprentices attending a training institution had to go through a two-week waiting period before qualifying for EI benefits. That waiting period applied each time an apprentice went for training. Now, as a result of the last budget, that two-week waiting period is applied only once throughout the duration of the program.

There are a number of other incentives that might be put in place to encourage more apprenticeship training. One is to help offset the costs of the apprenticeship program. Employer costs could be offset by providing tax deductions or tax credits. For apprentices, consideration should also be given to providing tax deductions or credits for the high cost of tools.

There could also be more opportunities for high school students to be exposed to the trades through, for example, pre-apprenticeship programs, mentoring by trades people, or co-op programs where students might spend part of their school time on a job site. I understand that there are some excellent models in Europe that help to generate a higher degree of interest.

We also need to encourage greater labour mobility throughout Canada. There is a program called "Red Seal," which has developed consistent interprovincial standards and certification requirements across some 45 trades in Canada. This is an excellent approach and perhaps it needs to be expanded to more trades.

The issue I have raised today is a very complex and challenging one and will not be easily or quickly resolved. The issue of skills shortages is limiting our potential as a nation. It is affecting the growth and development of our economy and society. I believe that the federal government must take a leadership role and work with other governments, industries, and educational and training institutions to develop good labour markets strategies. What we are doing now is not working as well as it should, and that means that our country is not working as well as it should.

On motion of Senator Hubley, debate adjourned.

The Senate adjourned until Wednesday, October 1, 2003, at 1:30 p.m.

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CANADA

# Debates of the Senate

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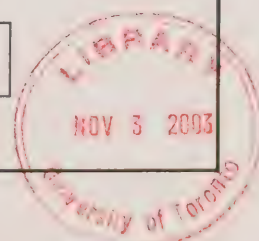
OFFICIAL REPORT  
(HANSARD)

**Wednesday, October 1, 2003**

—

**THE HONOURABLE DAN HAYS  
SPEAKER**

This issue contains the latest listing of Senators, Officers of the Senate, the Ministry, and Senators serving on Standing, Special and Joint Committees.



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## THE SENATE

Wednesday, October 1, 2003

The Senate met at 1:30 p.m., the Speaker in the Chair.

Prayers.

### SENATORS' STATEMENTS

#### FETAL ALCOHOL SYNDROME

**Hon. Yves Morin:** Honourable senators, a new child is a sign of promise and hope for the future. However, for the 3,000 Canadian babies born each year with fetal alcohol syndrome, this hope is blunted by a lifetime of challenges. Developmental delays, learning disabilities, behaviour problems and physical abnormalities are their legacy, simply because their mothers chose to drink alcohol while they were pregnant.

Fetal alcohol syndrome is found throughout the country but it is five times more prevalent in Aboriginal and northern communities. It takes a huge social and emotional toll, and it is estimated that each person with fetal alcohol syndrome will cost upwards of \$1.5 million over their lifetime for specialized health care, education and social programs.

What is both heartbreaking and frustrating is that fetal alcohol syndrome is entirely preventable. The Canadian Institute of Health Research supports a number of projects aimed at ending the cycle of fetal alcohol syndrome, and improving the lives of those already affected by it.

[Translation]

Honourable senators, the Institute of Neurosciences, Mental Health and Addiction, under the able direction of Dr. Rémy Quirion, has undertaken the funding of a major research program into fetal alcohol syndrome, its causes, incidence and treatment. The research team is headed by Dr. James Brien of Queen's University, and involves researchers from four other Canadian universities.

[English]

The CIHR Institute of Aboriginal Peoples' Health, under the able leadership of Dr. Jeff Reading, has made child and youth health — including fetal alcohol syndrome — one of its strategic priorities for research. It brings together Aboriginal communities and health researchers such as McMaster University's Dr. Stuart MacLeod and his colleagues who are working with mothers to develop a fetal alcohol syndrome prevention strategy.

Honourable senators, September 9 was Fetal Alcohol Syndrome Awareness Day in Canada. Let us mark the occasion by making a determination to end this tragic scourge. Awareness programs and good prenatal support, backed by evidence generated from research, can put an end to fetal alcohol syndrome, but the battle needs the support of us all.

#### NATIONAL DEFENCE

#### CANADIAN FORCES PARLIAMENTARY PROGRAM

**Hon. Gerry St. Germain:** Honourable senators, last year, enrolled in the Canadian Forces Parliamentary Program specifically the air force portion thereof. Last June, I spent a week at the Greenwood Air Force Base in Greenwood, Nova Scotia.

This is such a worthwhile program that I thought it appropriate to share with honourable senators a comment on the experience and, more important, to urge that each of you consider participating in the training program. There can be no doubt that the experience will expose you, as senators, to the truth of their operational environment, and the formidable devotion that our men and women put into maintaining our nation's security.

Honourable senators, it is truly incredible to see first hand the dedication and professionalism that our men and women in the Royal Canadian Air Force display as they carry out their duties in serving Canada. Even under the most challenging of times and circumstances, they never fail to rise to the occasion for which they have proudly volunteered.

Excluding the reserves, the force's strength has been depleted some 30,000 over the last 10 years, such that it now stands at 62,150. This year's budget is \$13.07 billion, from an overall planned spending of \$175.94 billion. This amount does not allow our forces to do the jobs that have been asked of them; and now the government has seemingly ordered another cut to their operations' budget. Give with one hand and take back with the other. That is unacceptable.

From Bosnia to Afghanistan, ice storms to forest fires, and now hurricane clean up, Canada's Armed Forces are under-funded and overstretched. This is not just my observation; it was also reported in the September 15, 2003 issue of the respected British publication, *Jane's Defence Weekly*.

The time has come when governments must recognize, as all Canadians realize, the importance of our military. We must provide them with the necessary tools so that they may better meet our needs when called upon to serve in times of defending freedom or in times of disaster.



## CRIMINAL CODE

[English]

CRUELTY TO ANIMALS BILL—  
ARTICLE FROM *NEWSNORTH* TABLED

**Hon. Charlie Watt:** Honourable senators, I would ask unanimous consent of the Senate to table and deliver to senators' desks an article published in the September 8, 2003 edition of *NewsNorth* entitled: "Man Survives Polar Bear Attack" together with my covering letter. If I could have the agreement of honourable senators to that tabling, I would appreciate it.

**The Hon. the Speaker:** Is leave granted for the tabling of a document by Senator Watt?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** It is agreed.

(1340)

## ROUTINE PROCEEDINGS

## PARLIAMENTARY DELEGATION TO INDIA

## REPORT TABLED

**Hon. Dan Hays:** Honourable senators, with leave of the Senate, I have the honour to table the report of the parliamentary delegation that travelled to India from November 17 to 23, 2002, at the invitation of Shri Bhairon Singh Shekhawat, Vice-President and Chairman of the Rajya Sabha, the Indian upper house, and Shri Manohar Joshi, Speaker of the Lok Sabha, the lower house of the Parliament of the Republic of India.

**Hon. Rose-Marie Losier-Cool (The Hon. the Acting Speaker):** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

[Translation]

STUDY ON OPERATION OF OFFICIAL LANGUAGES ACT  
AND RELEVANT REGULATIONS, DIRECTIVES  
AND REPORTSREPORT OF OFFICIAL LANGUAGES  
COMMITTEE TABLED

**Hon. Rose-Marie Losier-Cool:** Honourable senators, I have the honour to table the fourth report of the Standing Senate Committee on Official Languages, entitled: "Official Languages: 2002-2003 Perspective."

On motion of Senator Losier-Cool, and notwithstanding rule 97(3), report placed on the Orders of the Day for consideration at the next sitting of the Senate.

## QUESTION PERIOD

## FOREIGN AFFAIRS

SAUDI ARABIA—MALTREATMENT  
OF INCARCERATED CANADIAN CITIZEN

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, last evening, Peter Mansbridge on the CBC News program conducted an exclusive interview with William Sampson, the Canadian who was tortured by officials of the Kingdom of Saudi Arabia. It was very poignant. The testimony that Mr. Sampson gave on that television interview, which is one in a series of interviews, continues this evening.

With reference to my question of a few days ago, is the minister able to advise whether the Government of Canada will file a formal communication against the Kingdom of Saudi Arabia for a violation of the provisions of the convention against torture?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I must tell the honourable senator that I have no new information for him with respect to the Bill Sampson case.

## TREASURY BOARD

## WORKING GROUP ON WHISTLE-BLOWING POLICY

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, rather than asking the freshman senator from Ottawa Centre a question, which of course I cannot do, I will turn to the Auditor General's comments of yesterday.

The Auditor General stated that whistle-blowing mechanisms are perceived as ineffective or non-existent within the Office of the Privacy Commissioner. In addition, the President of the Treasury Board said, "The TBS commissioned a survey of employees of the Office of the Privacy Commissioner regarding their awareness of the internal disclosure policy in an effort to determine why they did not use it to disclose wrongdoing at the Office of the Privacy Commissioner. Information sessions are being organized." The Auditor General pointed out that anyone who dared question or displease the former commissioner, whose appointment was opposed by many of my colleagues on this side, or his inner circle were "banished from the commissioner's floor, excluded from meetings they should have attended, not allowed to put their names on reports and moved to other positions. In one case, the employee's work was contracted out."

Does the government seriously believe that it needs a survey to find out why people did not come forward? Does it seriously believe that information sessions would do anything in a climate where people feared reprisals?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, it is clear that the whistle-blowing provisions that were put into place only a few years ago have not worked effectively in that particular office. In that, there is no doubt. That is exactly why a working group has been put together, featuring such notables as Dr. Kenneth Kernaghan, Professor of Political Science and Management at Brock University, who will be the chair; Madam Hélène Beauchemin, President of HKBP Inc., a specialty firm focusing on professional and personal development; Mr. Denis Desautels, Director of the Centre on Governance at the University of Ottawa and a former Auditor General of Canada; Mr. Merdon Hosking, President of the Association of Public Services Financial Administrators, and Dr. Edward Keyserlingk, the Public Services Integrity Officer. Those five individuals have been asked to report no later than the end of January 2004 and to make recommendations as to what should be done with respect to whistle-blowing legislation or, alternatively, if, in their judgment an alternative process is made, what they would foresee as being the best way to deal with these issues so we do not have any more public servants intimidated, as they apparently were in the Office of the Privacy Commissioner.

**Senator Kinsella:** Honourable senators, let me thank the minister for her answer. I will use the occasion to suggest to anyone who occupies that seat in the future that the Honourable Leader of the Government has set an excellent example of how questions should be answered in this place.

Knowing the interest of all honourable senators to set in place the right mechanism for whistle-blowing, does the minister agree or does the government agree, in principle, that we do need whistle-blowing legislation as promised by the Prime Minister in his letter way back in 1993?

**Senator Carstairs:** Honourable senators, the government has put this group together. We will not tie its hands by telling it what its final conclusions must be. Given such a distinguished group of Canadians, I welcome their report and hope that we will get it in a very timely fashion, even before the end of January.

## NATIONAL DEFENCE

### BUDGET—REQUEST TO FIND SAVINGS

**Hon. Norman K. Atkins:** Honourable senators, my question is for the Leader of the Government in the Senate. The federal government confirmed yesterday that DND would have to find \$200 million — that is the largest amount from any department — to contribute to the government's efforts to meet new initiatives and cover unexpected costs.

The President of the Treasury Board stated Monday that reallocated money from the various departments will be used to contribute to the following Canadian priorities: families and communities, health care, education, the environment, SARS, mad cow disease, the cod fishery and the reconstruction of Iraq.

It was stated in this chamber a few weeks ago that DND's portion of the reallocation of money would stay within the department. Is that still the case for the entire \$200 million? If so,

can the minister tell this chamber whether the reallocation money will be used to contribute to the \$237 million that the defence department recently learned it will have to pay for the Afghanistan mission?

• (1350)

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I can assure the honourable senator that in the Supplementary Estimates tabled last week, \$193 million-worth of new money is to go to the Department of National Defence for the Afghanistan mission.

**Senator Atkins:** Honourable senators, except for CIDA money, the Treasury Board has yet to provide specific details on where each department's reallocation of funds will be going. Can the minister tell us when that information will be available regarding the DND money?

**Senator Carstairs:** Honourable senators, the question that the honourable senator has asked is a specific one and very much a part of the Supplementary Estimates review that is going on at the present time with the Standing Senate Committee on National Finance. Members of that committee are looking at the Supplementary Estimates, and I would hope that they would get some full answers from Treasury Board officials on just that question asked by the honourable senator.

## FISHERIES AND OCEANS

### PACIFIC SALMON COMMISSION—UNITED STATES' FUNDING

**Hon. Pat Carney:** Honourable senators, my question is directed to the Leader of the Government in the Senate, and I have given her notice of this question.

The Pacific Salmon Commission was established by treaty between Canada and the United States in 1985 by our Conservative government to conserve, manage and share between the two countries Pacific salmon, including the valuable and endangered Fraser River sockeye. That agreement was renewed in 1999.

The bilateral commission is based in Vancouver and is supposed to be financed equally by Canada and the United States under the treaty. During the current salmon season, the U.S. has failed to come up with its share, amounting to about \$1.5 million in Canadian dollars, and commission staff face layoffs and closure of the commission offices as the Canadian share of funds is being depleted. Although the U.S. state department now promises to find \$600,000, less than half its share, to keep the commission's doors open, that amount is insufficient to maintain the work of the commission beyond the end of December.

The Canadian government has been strangely silent on this issue. What is the government doing to ensure that the Americans pay their full share of the costs to maintain the work of this treaty-sanctioned commission?



**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, let me begin by thanking the honourable senator for giving me notice of this question because, as she noted, my health was not at its 100 per cent best yesterday, so I appreciated that very much.

First, Canada has made its full contribution for the year to the Pacific Salmon Commission. The United States, apparently, will be shortly providing the partial funding that the honourable senator talked of in her question, and the department is cautiously optimistic that the United States will overcome its funding difficulties and restore full funding of its share before the end of the year.

My understanding is that there is enough now to keep everything in full operation until the end of December, so if the additional monies come forward — and certainly that has been the assurance that we have been given — then this organization should be fully funded at that time.

**Senator Carney:** Honourable senators, I should point out that the commission's year is different from the calendar year, so that the amount of \$600,000 would not be sufficient to pay the Americans' share. That is the whole point. I thank the minister for her answer, nonetheless.

The 1999 agreement increased the share of the catch that goes to the U.S. fishermen and decreased the share going to the Canadian commercial fleet. Yet, in addition to this year's shortfall, the U.S. made no commitment to fund its share of the Pacific Salmon Commission next year. In other words, Canada is subsidizing American fishermen to fish, while the Canadian fishermen are banned from fishing salmon.

What is the Canadian government doing to ensure that the U.S. will honour its international commitment to pay its share of managing and conserving this international resource, or will Canadian taxpayers have to pick up the tab for the Americans again? I would like to know what steps the Canadian government is taking. Has it sent a diplomatic note, or reminded them of their treaty obligations? Cautiously optimistic is better than pessimistic, but it is not enough, in my view, to allay the concerns of the fishing communities involved.

**Senator Carstairs:** Honourable senators, I can tell the honourable senator that a conference call was held as recently as September 25, and that is where the optimism stems from. There is every hope on our side that the United States will honour its full obligation.

**Senator Carney:** Can the minister find out what those steps are? Hope is not enough to fill the nets of Canadian fishermen or to preserve our salmon.

**Senator Carstairs:** Honourable senators, we are dealing with two nations here. Clearly, there was a conference call between the commissioners. The Canadian commissioners stated their position clearly, that they believed the United States should honour its responsibilities here.

All I can tell the honourable senator is that we know they will be shortly providing partial funding. That partial funding will certainly keep the organization functioning for the next few months, and the Minister of Fisheries and Oceans is cautiously optimistic that we will overcome the remaining funding difficulties that exist.

## HEALTH

### ADDITIONAL FUNDING TO PROVINCES

**Hon. Wilbert J. Keon:** Honourable senators, my question is for the Leader of the Government in the Senate. Finance Minister John Manley has said that it is unlikely that the federal government will be able to provide the additional \$2 billion in health care funding that the provinces were promised, due to the economic fallout of SARS, mad cow disease, the BC forest fires and the blackout. Last February, the federal government promised to make the payment if the federal surplus was greater than \$3 billion. The finance minister says that the next report is likely to show a zero budget surplus for the 2002-03 fiscal year.

My question for the Leader of the Government in the Senate is this: Will there be consultation with the provinces before a final decision to withdraw the funding is made by the federal government?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, as the honourable senator knows, the amount of money was predicated on the financial forecast for Canada, and the good news out of July is that the GDP grew by .6 per cent, more than anticipated, and the quarterly growth now appears to be at 3 per cent, when there were some forecasts that it would slide considerably below 3 per cent. The news is good.

It would appear, with that news, that there might indeed be a surplus. However, the whole of the health accord decisions was based on the agreement by provinces and the federal government that there would indeed be a surplus, and that they would get their amount from that surplus.

**Senator Keon:** Honourable senators, should there not be a surplus, does the minister think there would be any adjustment whatsoever, or would there be no cash flow from the federal government to the provinces?

**Senator Carstairs:** That is a hypothetical question, honourable senators. I do not know whether or not there will be a surplus. Judging by the announcement yesterday of the GDP for August, things look better than they did even a short month before that.

## VETERANS AFFAIRS

### REMEMBRANCE DAY WREATH PROGRAM

**Hon. Michael A. Meighen:** Honourable senators, the Minister of Veterans Affairs, the Hon. Rey Pagtakhan, confirmed this week that Veterans Affairs will this year begin rationing the number of wreaths distributed on Remembrance Day. The practice, as honourable senators are aware, has been to send a wreath to each branch of the Royal Canadian Legion, but now, according to newspaper reports, Ottawa will send a single wreath to each MP's constituency, and I note in passing that that relates to members of Parliament, not to senators. Many MPs have more than one legion in their constituencies, and will thus need to phone Veterans Affairs by the beginning of next week in order to order more wreaths.

My question is this: Can the minister tell us the reason for this extraordinary decision, or is it just part of the same philosophy that gives Veterans Independence Program benefits to some widows, but not to all?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, the decision that has been made with respect to the single wreath is based on the decision that that is what the majority of MPs want, and that they are able to make a request for additional wreaths should they need them.

In terms of the comment about the decision applying to only MPs, I can assure the honourable senator that a message went over this morning to the effect that I consider senators also to be members of Parliament.

• (1400)

**Senator Meighen:** I am sure we all share the view of the Leader of the Government in the Senate in that regard, and we thank her for making that clear once again.

By way of supplementary, could the leader share with us what the needs are that Mr. Pagtakhan referred to, how this approach better meets them, and specifically whether the project partners — whatever they are and whoever they are — were notified of this change of policy, and when?

**Senator Carstairs:** Honourable senators, I do not have that information. I do not know who the project partners are and I do not know if they were notified. I will attempt to get that information for the honourable senator.

**Senator Meighen:** I should like to thank the leader for that answer, and perhaps while the minister is at it, she could find out what is a "project partner." I have never heard that term but, then again, there is a lot of modern speak I have not heard that seems to be flowing out.

Finally, while making those inquiries, perhaps the minister could inquire as to whether the change was driven by representations from the project partners, or did it come from the Department of Veterans Affairs?

**Senator Carstairs:** I will be pleased to find out who is calling the tune, be it the department or these project partners, whoever they may be.

## CITIZENSHIP AND IMMIGRATION

### REFUGEE CLAIM BY MR. ERNST ZUNDEL

**Hon. David Tkachuk:** Honourable senators, in February of this year, well-known Holocaust denier, Ernst Zundel, was deported to Canada from the United States. The federal government issued a national security certificate against him in May in order to send him back to Germany where he is wanted on hate crime charges. He is currently the subject of a detention review hearing that will determine if he should be released from jail pending the assessment of his national security risk status. The review will resume, I believe, on December 10.

Why is a detention review hearing held for a person who has been accused by the federal government of being a national security risk? If the government believes a person is dangerous enough to be deported from Canada, why is such a person permitted a hearing that may allow him or her to be released from custody?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, we have certain laws in this country and everyone who resides in this country is entitled to access to those laws. As the honourable senator knows, Mr. Zundel had earlier asked for release. That release was denied. We will need to await what occurs on December 10, but as much as the honourable senator and I may, on occasion, not like the way in which the law is applied to every single individual in this nation, that is what makes this country particularly special.

**Senator Tkachuk:** Can the Leader of the Government in the Senate tell us how much longer the federal government believes these proceedings will take?

**Senator Carstairs:** There is no way of evaluating exactly the length of time that these proceedings will take. The normal course of operations is being followed.

## OFFICE OF PRIVACY COMMISSIONER

### AUDITOR GENERAL'S REPORT— FINANCIAL REPORTING

**Hon. Terry Stratton:** Honourable senators, the Auditor General's report dealt with the widespread mismanagement of public funds and the abuse of public authority by the Office of the Privacy Commissioner. Among the areas raised was financial reporting. According to the Auditor General, those who prepared the financial statements of the Office of the Privacy Commissioner for the fiscal year ending March 31, 2003, knowingly omitted about \$234,000 of accounts payable at year-end. The false financial statements were submitted in June of 2003.



The report goes on to state that the financial officers had the responsibility to ensure the accurate accounting of spending and that the financial statements were presented fairly. According to the Auditor General, these individuals "failed to fulfill these most basic responsibilities." Within the general public, this act would most surely be considered by the proper authorities as fiscal fraud, and pursued accordingly.

Could the Leader of the Government in the Senate please inform this house if legal proceedings have been initiated against the persons who prepared the Privacy Commissioner's financial statement for the fiscal year ending in March of 2003?

**Hon. Sharon Carstairs (Leader of the Government):** I can tell the honourable senator that there may be as many as 12 investigations ongoing by the RCMP.

**Senator Stratton:** I must ask a supplementary question before I go into the next question, and I will tie the two together.

I would ask the Leader of the Government if she means that there are 12 RCMP investigations with respect to the Privacy Commissioner? Perhaps the leader might want to answer that question with this other supplemental question, if she could, please.

The financial inconsistency does not stop at the falsification of financial statements. This, in part, may be the minister's answer to the 12 investigations. The Auditor General indicated that several other cases of misuse of public funds had been referred to the RCMP for investigation. Among them is the improper cash-out of vacation time. The report states:

From June 2001 to May 2003, the former Commissioner cashed out vacation leave balances six times, receiving payments totalling about \$56,000.

These payments were made for vacation time that had already been taken but not reported. The report goes on to state:

In our opinion, that practice was not justified and accordingly those payments were inappropriate.

Also among them are the improper payments to the former commissioner that amounted to nothing more than personal loans on public accounts. According to the Auditor General's report:

...two \$15,000 payments to the former Commissioner (May 2002 and April 2003) were neither justified with supporting evidence nor issued in accordance with the Treasury Board's policy on standing advances...

It goes on to say:

...we believe that they are improper payments and contravened section 26 and section 33 of the *Financial Administration Act*.

Could the Leader of the Government in the Senate tell us how the former Privacy Commissioner managed to use public funds at his leisure, without consequence? What sanctions, if any, will be brought against the former Privacy Commissioner for this financial scandal?

**Senator Carstairs:** As the honourable senator indicates, the report of the Auditor General yesterday was scathing; there is no question about that. With reference to the investigations, I understand that there are 12 in total, not just 12 against one particular individual.

The Public Service of Canada does not tolerate wrongdoing, and those who have been found to have violated the value and ethics code for the public service or other laws and policies are subject to discipline, up to and including termination, and they are subject to criminal charges should the RCMP decide that, in fact, such criminal charges should be laid. The Treasury Board has indicated that it will cooperate fully, as one would expect, with the RCMP and those investigations are beginning now.

**Senator Stratton:** I have one final question, if I may, with respect to this matter. The problem that we are having is that we seem to go from one issue to another with respect to this kind of thing, and it is casting a pall over the entire civil service, which we all like to hold in high regard. I believe honourable senators on both sides of this chamber agree with that sentiment. However, that leads me to the question that if this is the case with respect to the Privacy Commissioner, are there other investigations ongoing in other departments, as a result of what has occurred with respect to the Office of the Privacy Commissioner, to ensure that this is an isolated case?

Honourable senators, I do not want a witch hunt, and I am not asking for a witch hunt here, but for goodness sake the last thing we need is for this incident to keep spinning, because it hurts everyone. The people who are hurt the most are the bureaucrats, and the people in this chamber are hurt as well.

Are there other, ongoing investigations to ensure that this kind of behaviour has not gone beyond — and will not go beyond — the Office of the Privacy Commissioner?

**Senator Carstairs:** I would be very surprised, honourable senators, if each and every deputy minister of government did not take that Auditor General's report very seriously and make sure that their departments do not have similar horror stories, because to do otherwise would not indicate the professionalism that you and I would both agree is very much in the realm of our public service.

I believe the difficulty is particularly acute, however, within the terms of an officer of Parliament. These are our officers, and I think that perhaps we have failed to be as vigilant as we might have been with respect to our officers of Parliament.

• (1410)

Honourable senators, we have seen scandals in the past. It is difficult for government — and here I speak of small “g” government, the cabinet, the Prime Minister — when it decides to take strong steps against an officer of Parliament. That officer of Parliament, rightly, is our officer of Parliament. That is why I made the suggestion yesterday in this chamber, and one that I hope honourable senators will seriously consider, that as the other place has established an operations committee, perhaps we should consider a similar committee or add to the mandate of the Standing Senate Committee on National Finance, which I would prefer.

### PUBLIC SERVICE COMMISSION TREASURY BOARD

#### AUDITOR GENERAL'S REPORT— STAFFING IRREGULARITIES IN OFFICE OF PRIVACY COMMISSIONER

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, one of the most troubling parts of the report from the Auditor General was the fact that two years ago, the Public Service Commission did an audit of reported excesses in management practices in the Office of the Privacy Commissioner and, according to the Auditor General, did nothing about it or so little that it had no impact.

Also, Treasury Board had to know of the excesses that were taking place, particularly the Privacy Commissioner not abiding by its guidelines and directives, and also did nothing.

In the last week or so, we have received what I call motherhood press releases from both the Public Service Commission and Treasury Board saying that they will introduce corrections, appoint this or that, have supervisory officers and so forth and so on. Why did they not do that immediately after finding out what was going on in that office?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, the information that I was given was that on the basis of routine interactions that would take place regularly with the Office of the Privacy Commissioner, there was nothing to indicate the depth of the problems that were outlined by the Auditor General.

The Auditor General has been provided with documents that indicate that the secretariat and the Treasury Board provided directions to the OPC on several occasions. The secretariat was engaged in a review of financial resource requirements for the office in light of the overspending, but the overspending was not, in and of itself, an indication of rampant financial mismanagement.

**Senator Lynch-Staunton:** Honourable senators, perhaps the minister will answer my next question. Page 11 of the Auditor General's report states:

48. The Public Service Commission failed to respond decisively when it learned about staffing irregularities at the Office of the Privacy Commissioner.

How can this situation have been allowed to fester when the most responsible agency just ignored the matter?

**Senator Carstairs:** Honourable senators, I do not have information from the Public Service Commission, but I can say that the Treasury Board Secretariat was aware that all of the executives in the OPC had been awarded the maximum amount of performance pay under the performance management program but did not learn until this summer that there were no performance agreements in place to support these payments. By that time, the Auditor General had already been called in and was doing her very thorough and careful investigation.

### VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I wish to draw your attention to the presence in our gallery of the Honourable Dr. Linda Baboolal, President of the Parliament of Trinidad and Tobago. She is accompanied by her colleague, Senator Ramesh Deosaran and the High Commissioner to Canada, His Excellency Arnold Alvin Piggott.

Welcome to the Senate of Canada.

### ORDERS OF THE DAY

#### CRIMINAL CODE

#### BILL TO AMEND—MESSAGE FROM COMMONS— DEBATE ADJOURNED

The Senate proceeded to consideration of the Message from the House of Commons concerning Bill C-10B, to amend the Criminal Code (cruelty to animals).

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I move:

That, with respect to the House of Commons message to the Senate dated September 29, 2003 regarding Bill C-10B:

- (i) The Senate do not insist on its amendment numbered 2;
- (ii) the Senate do not insist on its modified version of amendment numbered 3 to which the House of Commons disagreed;
- (iii) the Senate do not insist on its modified version of amendment numbered 4, but it do concur in the amendment made by the House of Commons to amendment numbered 4; and

That a Message be sent to the House of Commons to acquaint that House accordingly.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion?



## POINT OF ORDER

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I rise on a point of order. The item that is before this house is the consideration of the message from the House of Commons concerning this bill. How can we address a motion to take a certain step if we have not even considered the message? The motion is somewhat premature.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, the motion is not premature. As of yesterday, we have a message from the House of Commons. I have moved a motion so that we can debate the message as well as the motion put before us. I will speak to this matter as soon as we have dealt with this point of order.

**Senator Kinsella:** Honourable senators, let us look at the Order paper. What is before us is the message. We have agreed that we will take the message under consideration. Before we do this, the Leader of the Government in the Senate has said, "Let us not insist upon our message." We have not even considered the message yet, unless we all operate by a process of reasoning that is contrary to the proposition that nothing is in the intellect that was not first in the senses. In classical terms, we used to say *nihil est in intellectu quod non prius fuerit in sensu*, something that the people of Hampton, New Brunswick, hardly cease speaking about.

Honourable senators, the motion might be in order after we consider it, but the house order that we are dealing with right now is consideration of the message. Surely we should hear what the minister has to say about the message. Having heard that, we should hear from other honourable senators. Then, if an honourable senator wants to make a motion based upon our consideration, that is fine. However, this is all quite a priori.

[Translation]

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I really do not see where there is a problem. We regularly consider bills to which honourable senators may speak without prior notice and introduce related amendments or motions.

Today we have a message from the House of Commons. The government is presenting a motion, which we shall subsequently consider. I do not see why we would not proceed in that manner.

[English]

**Hon. Charlie Watt:** Honourable senators, I wish to raise some concerns about the motion that was put forward. I have read the message we received from the House of Commons. I believe it is not clear what the other place is saying. On one hand, they seem to appreciate and understand the clarification that was established by the Legal and Constitutional Affairs Committee.

(1420)

**The Hon. the Speaker:** I regret to interrupt Senator Watt. I want to be clear that we are now discussing a point of order raised by Senator Kinsella.

Are you speaking on the point of order, or do you wish to speak to the matter before us, Senator Watt?

**Senator Watt:** I wanted to address the point of order.

**The Hon. the Speaker:** Please proceed.

**Senator Watt:** As the message we have received from the House of Commons is unclear, I concur with colleagues on the other side that it is premature to move a motion concurring with it.

**Hon. Anne C. Cools:** Honourable senators, I believe that a valid point of order has been placed before us. Yesterday, I insisted that the message be read into the record so that it would stand before us, because it was my understanding that it had been decided that the message from the House of Commons would be placed on the Orders of the Day for consideration today.

Perhaps we should start at the beginning and try to rediscover what "consideration" means, because we seem to have a tendency to begin at the beginning every time. To my mind, "consideration" would probably address all the discussion and debate in which a house and its members would engage in prior to reaching a decision. As a matter of fact, consideration could even conclude with no decision.

The question before us is the "consideration of the Message from the House of Commons concerning Bill C-10B, An Act to amend the Criminal Code (cruelty to animals)."

What I heard Senator Carstairs do is beyond premature. As a matter of fact, it is even pre-emptive because Senator Carstairs' initiative essentially asks the chamber to set aside debate, consideration and discussion on the message and to spring to a decision. That is not entirely proper. There should be consideration and debate on the message itself because we have not been told what the message is about. We have not been told of the underlying basis for the message. As a matter of fact, we have not even, so far, been able to glean an insight into the thinking and the reasoning behind the message. All that we know is that Senator Carstairs' motion asks us to conclude, essentially, that the Senate is a very lame duck that should not only collapse, abdicate and surrender its original position but should do so before even having a proper discussion on the message.

I have a hard time accepting that conclusion, honourable senators. The proper thing to do is for the Leader of the Government in the Senate and the government supporters to tell us, first, what was in the mind of the House of Commons when it sent us this message and then, having shared some basic information with senators, perhaps then we could engage in a healthy debate.

Honourable senators, consideration of this message is all the more important because it is, I am prepared to say, no message. It could be called many things, including an epistle or a lecture. A debate on this message is extremely important because it is the most lengthy message I have ever encountered.

Honourable senators, I believe that Senator Carstairs' initiative is pre-emptive and premature. I believe that it would be better for her to hold her motion so that in debate we could have a bit of suspense with regard to what the government really intends to do. Just for once perhaps we may be able to have a surprise or two.

However you cut it, honourable senators, this motion is not in order at this time because it attempts to silence the debate, to arrest, direct and force the debate to a particular conclusion, which conclusion many of us may come to at a later time, but now is not the time.

**The Hon. the Speaker:** I wish to thank all senators for their comments on the point of order as to whether the motion put by Senator Carstairs is appropriate at this time with respect to debate on the message received from the House yesterday on Bill C-10B.

We normally put matters before the chamber by way of motion. The fact that the motion urges a conclusion on the Senate does not mean that the Senate will reach that conclusion. Accordingly, I see no problem procedurally in beginning the debate on the message by way of motion. I do not believe I require time to consider this point of order.

I draw to the attention of honourable senators our Hansard of June 10 of this year, at page 915, where we received a message on this same bill. We proceeded to debate that message by way of motion. Accordingly, I rule that it is appropriate to consider again our response to the message from the House of Commons by way of motion.

**Senator Carstairs:** Honourable senators, this afternoon I begin a debate that I expect will be fulsome and will engage a number of members of this chamber on the process of Bill C-10B. I want to go into some of its history and why I have moved the motion before you this afternoon.

Recall, honourable senators, that we have had Bill C-10 in its united form, if you will, for almost a year. This bill has been before the Senate of Canada since October 2002. The Senate adopted five amendments and gave third reading to this bill on May 29 of this year.

• (1430)

Honourable senators, clearly, through our study in October, November, December, February, March, April and May, we had considerable debate on this particular piece of legislation. As I have indicated, we proposed five amendments. We sent those amendments over to the House of Commons. The House of Commons agreed with two of the five amendments. The Commons agreed in principle with the third amendment, relating to colour of right. However, it is fair to say that the House of Commons adopted a different draft of that amendment. The Commons disagreed only with the two remaining amendments, with respect to Aboriginal hunting practices and the combining of two offence provisions. Effectively, this left three items outstanding, although there was, I think, substantial agreement on them.

In June, after deliberation in committee and in this chamber, the Senate effectively disagreed with the House of Commons on all three points; although, again, there was substantial agreement on the colour of right issue. Thus they were sent back to the House of Commons.

What we have before us today is a message from the House of Commons saying that, no, the House of Commons does not agree with our proposal that these three amendments continue to be altered. They have a different attitude about it and they are insisting on their amendments.

Honourable senators, it is important for us to understand just what these amendments are. Amendment number 2 would effectively combine the two offences of killing without lawful excuse and of causing unnecessary pain. The government, supported by the House of Commons, does not support this amendment. They believe that this amendment will give rise to confusion, particularly because the two offences deal with two different kinds of conduct, the elements of each offence are quite different, and that the phrase "unnecessary death" has no pedigree in criminal law and therefore it is not clear just how it would be interpreted. Therefore, they have taken the position that the two offences should remain clearly separate in the law.

Amendment number 3 would create a specific reference to Aboriginal hunting practices and section 35 of the Constitution Act, 1982. At best, the government feels that this amendment is unnecessary, since the Criminal Code is an ordinary statute and could not possibly abrogate or derogate from the rights of Aboriginal persons under section 35 of the Constitution. The Constitution is supreme. A simple act of Parliament cannot do something contrary to the Constitution; otherwise, it would be declared to be unconstitutional.

Honourable senators, the issue of non-derogation clauses is a complex one. As all honourable senators in this chamber know, last June I introduced a motion that the Standing Senate Committee on Legal and Constitutional Affairs study the whole issue of non-derogation clauses. Unfortunately, that is still before us. We have not moved the matter to that committee, which I know is more than willing to speak and address the issue.

Why did I think that study was necessary? Honourable senators, we now have in the statute books of Canada four different versions of non-derogation clauses — four! The amendment represents a fifth. I believe it is much more important that we find a solution, through study and consultation, that everyone can support. That is why I moved that motion. We want a global solution. We do not want to adopt a different non-derogation clause for each bill where the issue arises. In my view, to do so would be a disservice to our Aboriginal people, because it creates confusion. What exactly does this non-derogation clause mean? If we can keep changing its meaning in piece after piece of legislation, then does it have any meaning? It is important for us to study this issue thoroughly. I believe that the Senate is the best place in which to do that study.



Amendment number 4 is one on which there has been substantial agreement, because there has been agreement on including an explicit reference to the common law colour of right defence. The Commons has agreed that this should be done. However, the Commons had concerns, and continues to have concerns, about the way in which the Senate amendment was drafted.

The Standing Senate Committee on Legal and Constitutional Affairs accepted the drafting approach of the Commons. The utility of the Commons' approach is that by incorporating common law defences by reference to the existing section 429(2), there is no risk of losing the decades of settled jurisprudence that has been established under that section. However, our committee made an amendment to the House of Commons draft by removing the phrase "to the extent that they are relevant." The government believes that this phrase is an important element. The defences in subsection 429(2) of the Criminal Code apply to a variety of different offences, not just animal cruelty. The phrase "to the extent that they are relevant" would clearly show Parliament's intention that the current manner of applying those defences to animal cruelty offences should not change. In effect, it preserves the status quo.

To put it in a different perspective, I ask: Why should an accused person have access to a defence that is not relevant to the alleged offence?

The message we received yesterday indicates that the Commons is effectively insisting on all three points, consistent with its message of June 2, 2003. The message contains an elaborate explanation of the reasons for its disagreements with the Senate, many of which I have touched upon.

#### POINT OF ORDER

**Hon. Anne C. Cools:** Honourable senators, I rise on a point of order. I have been listening carefully to the words of the Leader of the Government, and simultaneously — because the question before us now is her motion — the motion is that the Senate do not insist on its amendment, which is in three parts, and that a message be sent to the House of Commons to acquaint that House accordingly. As I have been listening to the honourable senator, I have been consulting *Beauchesne's Parliamentary Rules and Forms* on the method of chambers expressing disagreement and of the chambers talking to each other. It has occurred to me that this motion is out of order, for a substantive set of reasons unrelated to what we were talking about earlier.

To frame the point that I should like to make, perhaps I could refer honourable senators to *Beauchesne's Parliamentary Rules and Forms*, fifth edition; in particular, paragraph 814. There must be great confusion, because either we are in debate on the message itself or on the motion in a substantive way about not insisting on amendments.

(1440)

Honourable senators, I refer you to *Beauchesne's fifth edition*, at page 241, "House Consideration of Senate Amendments." Paragraph 814 states:

When the House of Commons does not agree to the Senate amendments, it adopts a motion which states reasons for its disagreement.

The House did that. Paragraph 814 continues:

This is communicated to the Senate. If the Senators persist in their amendments, they send a message informing the House of this fact.

Honourable senators, the Senate made amendments and sent a message to the Commons. The Commons sent a message back, and then, in turn, the Senate sent a message back. In other words, senators insisted. Paragraph 814 continues with the following critical words:

Upon this, the House either accepts the amendments or adopts a motion requesting a conference to which each House appoints Members; and a date is fixed for their meeting. Should they again disagree, the House may accept the amendments or the Senate may withdraw them, but when neither of these courses is followed, no further action is taken on the bill.

There is something very wrong in how the House of Commons is proceeding today on this issue. The Senate made amendments and the House looked at them and sent back their opinion of them. The Senate looked at those amendments again and sent back the message: "We do insist." After the senators sent the message to the House that they insist, then, I repeat, according to *Beauchesne's fifth edition*, paragraph 814:

Upon this, the House either accepts the amendments or adopts a motion requesting a conference to which each House appoints Members; and a date is fixed for their meeting. Should they again disagree, the House may accept the amendments or the Senate may withdraw them, but when neither of these courses is followed, no further action is taken on the bill.

Honourable senators, neither the House of Commons nor the Leader of the Government in the Senate is following the course of action that is outlined in *Beauchesne's fifth edition*.

There is a great deal to be said about this message, and I would sustain an argument to be raised, perhaps, at a later time. The message deeply violates the privileges of the Senate and was neither scripted in parliamentary language nor written as a message from one chamber of Parliament to the other. I will give honourable senators an example: The first sentence of the message from the House of Commons states:

That a message be sent to the Senate to acquaint their Honours that, with respect to Bill C-10B, An Act to amend the Criminal Code (cruelty to animals), this House continues to disagree with the Senate's insistence on amendment numbered 2...

I have news for the person who drafted this particular message: The House of Commons cannot continue to disagree with the Senate's insistence. The Senate has insisted; and that means it insists. The House may continue to disagree with the amendments in a substantive way but they cannot simply continue to disagree with the insistence. The entire document is written in an odd and unparliamentary way.

I would give honourable senators another example at subparagraph (1) of the message: "This House does not agree with the amendment numbered 2..." Parliamentarians would know that Parliamentary messages between the two Houses are always written in the positive, such that the messages words "This House does not agree," should read "This House disagrees." This kind of language is found throughout this particular document. It is even dubious whether this document was actually scripted by someone in Parliament.

Honourable senators, when the Senate insists on an amendment, the proper procedure is for the Commons, the House in possession of the message, to adopt a motion requesting a conference of members of both Houses. That is the proper procedure. There are prescribed steps that should be followed when the two Houses of Parliament come to a disagreement and those steps should be followed, rather than a simple motion to ask the Senate to abandon all that it has said and agreed upon.

The House is out of order in this instance. The minister or other member of the House of Commons should move a motion requesting a conference of members of both Houses. The procedure thus far has been highly unusual and improper.

[Translation]

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, for a number of reasons, it is difficult to understand how this could be considered a point of order. Rather, we are questioning the decision that everything was in order and that we should proceed.

We received the message yesterday from the House of Commons. The House of Commons is independent of this house, and we cannot tell them what they should do. The message was received, read and placed on the Orders of the Day. If there was a problem with this message, we should have raised it yesterday. The message was accepted and it is before us. The motion was in order and had to do with the message now before us. The decision was made that we should proceed. How can we then try to delay debate? This point of order is quite simply frivolous, honourable senators.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, the issue before us is the amendment, not the message.

If the issue were the message presented by Senator Cools, the comment would be appropriate. The issue is not the message before us, but the amendment. Is rule 59(8) involved? This rule covers situations where notice is necessary.

[ Senator Cools ]

59. Notice is not required for:

(8) Consideration forthwith or at a future sitting of Commons amendments [...];

In the current situation, there is no Commons amendment. In reality, the House of Commons has rejected the amendments proposed by the Senate. The question then arises: Must there be notice? Without notice, honourable senators have no way of knowing what is on the table before they come into this chamber. That is the problem.

• (1450)

We came to the house intending to have a debate on the content of the message from the House of Commons. The Leader of the Government is proposing something else. That is the issue before us. We did not receive a notice. The Leader of the Government did not resolve the issue of whether notice was required or not.

I see in the Rules of the Senate that notice is required under certain circumstances. Rule 59(8) stipulates that:

59. Notice is not required for:

(8) Consideration forthwith or at a future sitting of Commons amendments to a public bill;

However, the message from the House of Commons contains no amendment. That means the message does not come under the category of notice not being required. Therefore notice is required; otherwise, we would arrive at the House without knowing what is on the Orders of the Day.

[English]

**The Hon. the Speaker:** Honourable senators, I think I have heard enough for me to deal with Senator Cools' point as spoken to by Senators Robichaud and Kinsella. I thank the honourable senators for their intervention.

In effect, Senator Cools is making the point that the only way to deal with this matter would be to follow the *procedures* that she described from Beauchesne's, fifth edition, which relate to conferences. This is not a new matter to us in this place. We have established practices; I am not sure of the date of the fifth edition, but we are using the sixth edition of Beauchesne's at the present time, and I would like to use that as the authority. I think it is important, given the matter raised by the Honourable Senator Cools, to read the relevant provisions in Beauchesne's sixth edition. I am quoting at page 216, paragraph 743:

When the House of Commons does not agree to the Senate amendments, it adopts a motion which states reasons for its disagreement. This is communicated to the Senate by a written Message. If the Senators persist in their amendments, they send a Message informing the House of this fact. The House may adopt the amendments, or return them to the Senate with a further Message.



I emphasize these next words.

This may occur a number of times.

I will end there and let honourable senators read it for themselves.

I will quote as well from another text that we use — Marleau and Montpetit — quoting from the only edition that has been published to my knowledge, at page 675, under the heading, "Passage of Senate amendments (if any) by the House of Commons." In the last paragraph, before the heading "Conference Between the Houses," it states:

It —

— the Senate —

— may decide to accept the decision of the House, to reject that decision and insist that its amendments be maintained, or to amend what the House has proposed. Regardless of what the Senate decides, it sends another message to the House to inform it of the decision. Communication between the two Houses goes on in this way until they ultimately agree on a text.

There are provisions for conferencing that are available to the two Houses. However, there is also the procedure available to the two Houses that we are following: that is, sending messages back and forth until such time as we agree.

Accordingly, I find nothing out of order with the way in which we are proceeding, particularly nothing in the sense that the only alternative to us now would be to use our conferencing procedures.

As to the question of notice, Senator Kinsella's reading of the rule is correct. This matter could have proceeded yesterday; there is no notice required. We are proceeding today. I rule that the debate can continue.

**Hon. Sharon Carstairs (Leader of the Government):** I thank honourable senators for being able to keep their train of thought with the interruptions that have gone on. I am not sure that I have entirely maintained mine, but I will give it my very best shot.

What is clear is that the Commons has now disagreed with the Senate for the second time with respect to these three amendments that we have under discussion this afternoon as a result of their message. I personally believe that the Senate can take pride in the fact that, effectively, the Commons has agreed to three out of our five amendments. They had decided not to insist on changes to those three, in essence. The result would be a bill that finally becomes law, having been substantially improved, in my view, by the Senate of Canada. Clearly, this is the outcome preferred by the government, and that is why I am moving this message today.

The Senate has the power, if it wishes, to insist on all three of its amendments. However, I believe that the Commons will not change its mind; and should the Senate choose this option, it would result in effectively forcing this bill to die, yet again, on another Order Paper. Honourable senators, that would be a tragedy, in my view.

There is no one in this Senate who would argue that the penalties against individuals who are cruel to animals should be increased. I do not think there is anyone here who does not agree that we should prevent cruelty to animals in every instance that we can do so. Let us remember that that is the purpose of this bill.

Honourable senators, the Senate makes an important contribution to the legislative process in Canada. This bill is the very illustration of this fact. The Senate often amends bills and the Commons usually accepts those amendments. We all know that the Senate has even defeated substantial government bills in the past. This rarely happens, but clearly the Senate has been given the constitutional authority to do so for good reason. I do not believe that this is a bill that the Senate wants to defeat. I believe it is a bill that the Senate wishes to pass.

It is also rare in this chamber to insist on our amendments, but we have done so in this case. I think it is important to bear in mind that it is equally rare for the House of Commons to disagree with Senate amendments, and even more exceptional for the Commons to insist.

I believe that senators have only two options: We can pass this bill, including the three amendments that senators have fought so hard to achieve, or we can insist on the amendments that have not yet been reconciled, and take the significant risk that this bill will not become law. In that case, all of our good efforts, and the efforts of all the senators who worked so hard in this committee, will have been wasted. Honourable senators, I believe it is time to pass this bill.

• (1500)

[Translation]

**Hon. Aurélien Gill:** Honourable senators, with all due respect for the Leader of the Government in the Senate, I would like some clarification. We all agree that we oppose cruelty to animals. There is not much resistance to this principle.

However, if this legislation affects a way of life, if it casts doubt on a people's customs, then it deserves some serious consideration. I want to mention another debate. Is it possible in Canada for the First Nations to feel as if they are included and their rights protected to the same extent as any other citizen of this country? Everyone agrees that, each time legislation affecting the First Nations is introduced, we always come second, and our rights as Aboriginals are always violated. I know that this is not ill will, that the country has to function and that, often, the legislation in question is very positive. But the First Nations must always pay the price of implementing such legislation. When will it end?

I understand that the system functions in a certain way. We must try to make things easier. If there is some sand in the gears, there will be problems. By drawing a parallel between the system and real life, or people's needs, can we not set some priorities, even if this means that the system will be affected? I know that the standard procedure has been followed.

I listened to the legal argument. I could not participate, because I am not a lawyer. If I want a canoe, I must build it, and it must take me somewhere. Parliament legislates. The legislation must respect the rights of citizens.

Will the Leader of the Government tell us what comes first? Is it the system or the people, including the First Nations, who are expecting just laws in this country?

[English]

**Senator Carstairs:** Honourable senators, there is no higher protection for Aboriginal people than section 35 of the Canada Act. Section 35 respects the rights of our Aboriginal peoples. There is no question about that. As I indicated in my remarks, no simple piece of legislation can do anything to take from Aboriginal people that which has been granted to them in the Constitution.

There are also provisions in this bill that permit such things as customary practice. In the bill itself, the customary practices of hunters and trappers and fishers, which includes our Aboriginal people, are protected.

I would suggest to all honourable senators gathered here today that Aboriginal people are not cruel to animals. They know of cruelty to animals. They know of cruelty perpetrated against animals. However, I do not think that as a people they practice cruelty to animals. There is no indication — at least nothing I have ever read — that would lead me to such a conclusion. I fail to understand the honourable senator's depth of concern.

[Translation]

**Senator Gill:** If the rights of Aboriginal people are guaranteed under the Constitution, why do they keep having to go before the courts? If the Constitution is good, why do they have to go to court to assert their rights and argue all sorts of cases?

[English]

**Senator Carstairs:** There is no question that, on occasion, the Aboriginal peoples have been forced to take their cases to court, which is unfortunate because it is a costly and time-consuming practice. We should do everything in our power to avoid putting our Aboriginal peoples in that position.

Honourable senators, I think the legislation is very clear. The customs and practices of Aboriginal people, of hunters and fishers and trappers generally, are protected. However, what will not be tolerated by Canadian society and what will not be tolerated by our Aboriginal peoples is unnecessary cruelty to animals that also live on and share our land.

**Hon. Charlie Watt:** Honourable senators, perhaps our leader would be prepared to answer some questions.

If customary practices had been recognized in this bill, I do not think we would be making these points so strenuously.

[ Senator Gill ]

I understand what Senator Carstairs is describing. Our rights are entrenched in the Constitution, with which we have no quarrel. We begin to have a quarrel when an ordinary piece of legislation is put forward as a way to describe that. I can remember nothing stating the fact that customary practice is recognized in this particular bill. Could the honourable senator enlighten me as to the law that exists and, more important, where customary practice is recognized in this particular bill?

**Senator Carstairs:** Honourable senators, I will make that information available. I do not have it available to me right at this moment.

**Hon. Herbert O. Sparrow:** Honourable senators, I have a question for the Leader of the Government in the Senate. Going back to the introduction of Bill C-10 in the chamber and its referral to committee, the government had insisted on no changes to the animal cruelty provisions, except an increase in penalties. We accepted the bill on that basis, until we read it and heard witnesses, and so on, and it was shown that they had gone further than this aspect of just increasing penalties. We continued to use the argument that no one is in favour of cruelty to animals, which is true, be it the House of Commons, the government or anyone else.

Honourable senators, we are talking about not only the cruelty to animals, but we are actually forcing a cruelty on people who make their living trapping, hunting and fishing. The cruelty may be reflected upon them, not only on the animals we want to protect from cruelty.

Getting to my point, the Leader of the Government in the Senate is insisting that if this bill is not passed, it will be the fault of the Senate. Well, it will not be the fault of the Senate; it will be the fault, if any place, of the House of Commons. Do not tar us with the blame for defeating the bill. We are not defeating the bill. We have made proper amendments to the bill and support the amended bill. We cannot, in this chamber, give ammunition to other people and say that the blame will rest with the Senate. It is already resting with the House of Commons because they are the ones who are not accepting those amendments.

• (1510)

Madam Leader, would you agree that it will not be the fault of the Senate if this bill is not passed with the amendments by the House of Commons?

**Senator Carstairs:** Honourable senators, as I indicated in my remarks, I believe the motion I have made today is appropriate. If we do not move forward with that motion, this bill is unlikely to become law, and I think that would be a great tragedy.

**Senator Sparrow:** I am sorry. The Honourable Leader of the Government in the Senate did not answer my question. Is she saying that the Senate would take the blame for that?



**Senator Carstairs:** What I have said, what I will repeat, even though the honourable senator does not like my answer, but nevertheless, this is my answer: If we do not move forward on this bill, the bill may be lost, and I think that would be a tragedy.

On motion of Senator Beaudoin, debate adjourned.

### VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I draw your attention to the presence in our gallery of His Excellency C. Fernandez De Cossio Dominguez, Ambassador to Canada from the Republic of Cuba. He is accompanied by Ms. Aleida Guevara, a paediatrician in Cuba and the daughter of Ernesto "Che" Guevara. She is accompanied by Ms. Irma González.

Welcome to the Senate of Canada.

### PUBLIC SERVICE MODERNIZATION BILL

#### THIRD READING—MOTION IN AMENDMENT—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Harb, for the third reading of Bill C-25, to modernize employment and labour relations in the public service and to amend the Financial Administration Act and the Canadian Centre for Management Development Act and to make consequential amendments to other Acts,

And on the motion in amendment of the Honourable Senator Beaudoin, seconded by the Honourable Senator Comeau, that the Bill be not now read a third time but that it be amended in clause 12, on page 126, by replacing lines 8 to 12 with the following:

"30. (1) Appointments by the Commission to or from within the public service shall be free from political influence and shall be made on the basis of merit by competition or by such other process of personnel selection designed to establish the relative merit of candidates as the Commission considers is in the best interests of the public service.

(1.1) Despite subsection (1), an appointment may be made on the basis of individual merit in the circumstances prescribed by the regulations of the Commission.

(2) An appointment is made on the basis of individual".

**Hon. Joseph A. Day:** Honourable senators, I will speak briefly against the amendment that was proposed in this particular matter. It was proposed by the Honourable Senator Beaudoin, but as he indicated during his remarks, the amendment was based on his being convinced of this point by our former colleague the Honourable Senator Bolduc.

Honourable senators, to bring you back in focus, Bill C-25 deals with public service reorganization and, in particular, the focus on the human resources management in the public service. Honourable senators will recall that this issue of a need for amendment and a change with respect to the public service human resources management has been going on for approximately 35 years. Our current minister, Madam Robillard, has finally taken on this very important and long overdue task.

The bill before you, Bill C-25, deals with several aspects of human resources management, one aspect being a change with respect to education and continuing education within the public service, the creation of the Canada School of Public Service, which amends the Canadian Centre for Management Development Act and rolls it into this new school. The Public Service Employment Act is extensively amended, the Finance Administration Act is amended, and there is an extensive change with respect to labour relations in a new act entitled Public Service Labour Relations Act. All of those aspects are in this one bill, Bill C-25.

I will now bring honourable senators to the amendment. The amendment proposed by my honourable friend opposite is with respect to the Public Service Employment Act, section 30. If honourable senators look at the amendment, they will see that it has several aspects to it. It would appear, by reading the amendment only, that it is attempting to introduce the issue of merit. I want, first of all, honourable senators, to make it very clear that the issue of merit in the public service is the cornerstone. It is the essence of the Public Service Employment Act.

The amendment, in effect, is derogating from the attempt to enhance that principle, and that is part of the reason I am urging honourable senators not to support this amendment. Section 30 very clearly establishes that merit is the basis for staffing within the public service.

If honourable senators will recall, during my remarks some time ago on this bill in third reading, we discussed the 2001 Auditor General's report outlining that the public service staffing situation needed some work. That was before the bill was proposed. Subsequent to that, the Auditor General came before the committee and was pleased to see that this bill was being presented, that we were dealing with it and that it was a good step in the right direction. That is just so that honourable senators will recall the difficulty that existed in the past, and what this legislation is intended to correct.

The merit principle had gone to the courts so often over the past 40 years that the courts had set up all these various tests. The managers in their hiring process were doing one of two things: One way to deal with all of these court cases was to act, not as a manager in assessing the merit of the potential employee, but rather, trying to meet all the different little steps and rules that had been set up by these various court decisions. That was one way in which they were dealing with the situation, which got away from the basic principle of hiring on merit.

The other and very common practice that we have all heard about that became almost *de rigueur* was hiring on a temporary basis. To avoid all of these court cases and to avoid going through the normal employment process, the practice was to hire on a temporary or term position, and then, sometime after the person was *in situ* on that basis, to move him or her ahead.

That is the essence of what we are trying to get away from. That is the primary concern that the Auditor General had, and section 30 deals with that difficulty that has existed, by defining merit in section 2.

Now, if one looks at this amendment, the amendment will restrict the definition of merit that is in the bill only to individual merit, and that is one aspect of this amendment. Therefore, in normal hiring, the amendment will, in effect, bring back all of those court decisions. It will put the managers right back to where they were: not managers at all but clerks who were trying to make sure all of these various tests were met.

Some of the tests, honourable senators, that the courts had imposed through recent court decisions told us how we must mark the examination that the employee takes, how we must mark each answer in a test with a separate pass mark. The court decisions have gone into that kind of minutiae, and that is what the managers were dealing with. We do not want to bring all that back again. Despite the good intentions of the Honourable Senator Beaudoin and our colleague the Honourable Senator Bolduc, that is exactly what this amendment would do, in part.

The other part is the introduction of the term "competition." Honourable senators, the other thrust of this legislation is to let the managers manage, and to put in place strong checks and balances to ensure that the managers meet their obligations and that they are not abusing their positions. We talked about the creation of a public service staffing tribunal with the authority to appoint from within and the role of the Public Service Commission for other appointments. That allows managers to manage.

• (1520)

I am hopeful honourable senators will agree that this amendment talks about competition, because if managers are managing, sometimes they want to apply the principles that are outlined here, and we would expect them to do so. One of them is employment equity. Another is the Official Languages Act. If we move forward strictly with the notion of competition, we are back into the competition process and grading individuals who have taken the test, which does not give managers the opportunity to meet other requirements in order to create a proper balance on employment equity, visible minorities and language equity. However, if we give managers authority in those areas, we need a check on that authority. We must be able to take that authority away and to deal with those managers who abuse it.

Honourable senators, all of that is in this bill and all of that would be seriously jeopardized by this amendment. I therefore respectfully suggest that we vote against this amendment.

**Hon. Lowell Murray:** May I ask the honourable senator a question or two?

**Senator Day:** I would be happy to receive a question or two.

**Senator Murray:** Honourable senators, by way of preface, I am always bemused to hear practising lawyers complain about the "judicialization" of the system.

That being said, in lamenting the recourse to the courts and the role of the courts on these matters, is the honourable senator not arguing against the principle of competition? Is he not arguing against relative merit in general? What hope do we have that letting the managers manage will ever produce much by way of competition, given that over 40 per cent of positions, even under the present law, are decided without competition?

Second, has the honourable senator's attention been drawn in the last couple of days to the report by the Auditor General on the Public Service Commission and the Office of the Privacy Commissioner? Does he recall one of the speeches of Senator Bolduc warning that managers will design job descriptions specifically to suit the person they want to hire? The Auditor General's report disclosed that this has happened in the Office of the Privacy Commissioner. Does that fact not point to the need for an amendment to this legislation requiring that the concept of relative merit by way of competition be applied?

**Senator Day:** I thank the honourable senator for those questions. I always reply to jokes about lawyers and complaining about lawyers by reminding honourable senators that my first profession and continuing second profession is that of an engineer, so I always welcome and participate in discussions about lawyers.

With respect to the issue of competition, the important thing is to not oblige managers to enter into competitions regarding each staffing assignment, but to give them the flexibility to do so. In the event that managers do not have a good reason for using competition or using advertising to fill a position, that is one of the specific items under the abuse of authority into which the tribunal can look and, in fact, can cancel the appointment based on their authority.

With respect to the setting of standards and the recent report by the Auditor General, there have been several reports. There was also a report by the Public Service Commission, both reports coming out in the last couple of days. It is important to remember that we are dealing with the Office of the Privacy Commissioner. We are not dealing with the normal core public service, but rather with an officer of Parliament. The system does work in that a committee of the House of Commons started to look into this office thoroughly. We have a number of checks and balances in that regard, which include both Houses of Parliament.

As I understand the contemplated procedure with respect to the delegation of staffing, the Public Service Commission will be able to focus on auditing, as opposed to doing a lot of the other things, like education and many of the other hiring processes that it was involved in before. However, it will still be involved in setting certain standards and regulations that it expects to be followed, and it can run audits to check if they have been followed, which I believe is a good way to go.



**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I cannot accept that because one is an officer of Parliament, one should be exempt from basic guidelines that affect the deputy head community. The Auditor General is the first one to maintain that she, along with other officers, come under that rubric and therefore should follow the guidelines that are applicable to them.

Where in the bill can we find guarantees or even a mention of the criteria to which the Honourable Senator Day has referred, which I fully support should be always in mind when employment is being considered, criteria such as gender, minority rights, handicaps and so forth? Where would one find that those criteria are included in the competition system and in the merit system?

**Senator Day:** Honourable senators, I now have to put on my lawyer's hat to see if I can find these criteria for my honourable friend. One clause of the bill that comes to mind immediately is clause 34(1) under the proposed Public Service Employment Act. It can be found at page 127 of the bill. It states:

For purposes of eligibility in any appointment process, other than an incumbent-based process —

— which refers to someone already in the system —

— the Commission may determine an area of selection by establishing geographic, organizational or occupational criteria, or by establishing, as a criterion, belonging to any of the designated groups within the meaning of section 3 of the *Employment Equity Act*.

I do not have the designated groups with me, but visible minorities would be one of them, I believe.

If the honourable senator wishes, I will look for that.

**Senator Lynch-Staunton:** No, I will look into it, thank you.

I feel that the amendment that Senator Beaudoin proposed yesterday does not contradict the clauses that he wishes to see amended, but reinforces them by confirming that certain criteria, which are now specified in the act, must be included in the evaluation of any candidate. One clause does talk about being free from patronage and does talk about merit. The proposed amendment maintains the essence of the clause and simply adds:

...or by such other process of personnel selection designed to establish the relative merit of candidates that the

Commission considers is in the best interests of the public service.

To me that includes minorities, Aborigines, the handicapped and others who need special consideration when it comes to being assessed as a candidate. That is why I am strongly in support of this amendment, because it reinforces what is already there and confirms exactly what Senator Day has been maintaining should be part of the competitive process and the final decision on any candidacy.

• (1530)

**Senator Day:** Was that a question? I am not certain.

**Senator Lynch-Staunton:** My remarks were a suggestion that the honourable senator look again at his appreciation of this amendment and, after my argumentation, support Senator Beaudoin.

**Senator Day:** I appreciate the comments of the honourable senator.

On motion of Senator Kinsella, debate adjourned.

[Translation]

## BUSINESS OF THE SENATE

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, today is Wednesday and several committees must sit. We could, as we have done many times before in this chamber, allow all items on the Order Paper that have not been reached to stand in their place. This way, we could now proceed to the adjournment motion. Is there consent, honourable senators, to proceed in this fashion?

[English]

**The Hon. the Speaker:** Is it agreed, honourable senators, that we proceed to the adjournment motion, all other matters standing in their place?

**Hon. Senators:** Agreed.

The Senate adjourned until Thursday, October 2, 2003, at 1:30 p.m.





## **APPENDIX**

Officers of the Senate

The Ministry

Senators

(Listed according to seniority, alphabetically and by provinces)

Committees of the Senate

**THE SPEAKER**

The Honourable Daniel P. Hays

**THE LEADER OF THE GOVERNMENT**

The Honourable Sharon Carstairs, P.C.

**THE LEADER OF THE OPPOSITION**

The Honourable John Lynch-Staunton

---

**OFFICERS OF THE SENATE****CLERK OF THE SENATE AND CLERK OF THE PARLIAMENTS**

Paul Bélisle

**DEPUTY CLERK, PRINCIPAL CLERK, LEGISLATIVE SERVICES**

Gary O'Brien

**LAW CLERK AND PARLIAMENTARY COUNSEL**

Mark Audcent

**USHER OF THE BLACK ROD**

Terrance J. Christopher



## THE MINISTRY

According to Precedence

(October 1, 2003)

The Right Hon. Jean Chrétien	Prime Minister
The Hon. David M. Collenette	Minister of Transport
The Hon. David Anderson	Minister of the Environment
The Hon. Ralph E. Goodale	Minister of Public Works and Government Services Minister responsible for the Canadian Wheat Board and Federal Interlocutor for Métis and Non-Status Indians
The Hon. Sheila Copps	Minister of Canadian Heritage
The Hon. John Manley	Deputy Prime Minister, Minister of Finance and Minister of Infrastructure
The Hon. Anne McLellan	Minister of Health
The Hon. Allan Rock	Minister of Industry
The Hon. Lucienne Robillard	President of the Treasury Board
The Hon. Martin Cauchon	Minister of Justice and Attorney General of Canada
The Hon. Jane Stewart	Minister of Human Resources Development
The Hon. Stéphane Dion	President of the Queen's Privy Council for Canada and Minister of Intergovernmental Affairs
The Hon. Pierre Pettigrew	Minister of International Trade
The Hon. Don Boudria	Leader of the Government in the House of Commons
The Hon. Lyle Vanclief	Minister of Agriculture and Agri-Food
The Hon. Herb Dhaliwal	Minister of Natural Resources
The Hon. Claudette Bradshaw	Minister of Labour
The Hon. Robert Daniel Nault	Minister of Indian Affairs and Northern Development
The Hon. Elinor Caplan	Minister for National Revenue
The Hon. Denis Coderre	Minister of Citizenship and Immigration
The Hon. Sharon Carstairs	Leader of the Government in the Senate
The Hon. Robert G. Thibault	Minister of Fisheries and Oceans
The Hon. Rey Pagtakhan	Minister of Veterans Affairs and Secretary of State (Science, Research and Development)
The Hon. Susan Whelan	Minister for International Cooperation
The Hon. William Graham	Minister of Foreign Affairs
The Hon. Gerry Byrne	Minister of State (Atlantic Canada Opportunities Agency)
The Hon. John McCallum	Minister of National Defence
The Hon. Wayne Easter	Solicitor General of Canada
The Hon. Ethel Blondin-Andrew	Secretary of State (Children and Youth)
The Hon. David Kilgour	Secretary of State (Asia-Pacific)
The Hon. Andrew Mitchell	Secretary of State (Rural Development) (Federal Economic Development Initiative for Northern Ontario)
The Hon. Maurizio Bevilacqua	Secretary of State (International Financial Institutions)
The Hon. Paul DeVillers	Secretary of State (Amateur Sport) and Deputy Leader of the Government in the House of Commons
The Hon. Gar Knutson	Secretary of State (Central and Eastern Europe and Middle East)
The Hon. Denis Paradis	Secretary of State (Latin America and Africa) (Francophonie)
The Hon. Claude Drouin	Secretary of State (Economic Development Agency of Canada for the Regions of Quebec)
The Hon. Stephen Owen	Secretary of State (Western Economic Diversification) (Indian Affairs and Northern Development)
The Hon. Jean Augustine	Secretary of State (Multiculturalism) (Status of Women)
The Hon. Steve Mahoney	Secretary of State (Selected Crown Corporations)

## SENATORS OF CANADA

## ACCORDING TO SENIORITY

(October 1, 2003)

Senator	Designation	Post Office Address
THE HONOURABLE		
Herbert O. Sparrow	Saskatchewan	North Battleford, Sask.
Edward M. Lawson	Vancouver	Vancouver, B.C.
Bernard Alasdair Graham, P.C.	The Highlands	Sydney, N.S.
Jack Austin, P.C.	Vancouver South	Vancouver, B.C.
Willie Adams	Nunavut	Rankin Inlet, Nunavut
Lowell Murray, P.C.	Pakenham	Ottawa, Ont.
C. William Doody	Harbour Main-Bell Island	St. John's, Nfld. & Lab.
Peter Alan Stollery	Bloor and Yonge	Toronto, Ont.
Peter Michael Pitfield, P.C.	Ottawa-Vanier	Ottawa, Ont.
E. Leo Kolber	Victoria	Westmount, Que.
Michael Kirby	South Shore	Halifax, N.S.
Jerahmiel S. Grafstein	Metro Toronto	Toronto, Ont.
Anne C. Cools	Toronto-Centre-York	Toronto, Ont.
Charlie Watt	Inkerman	Kuujuuaq, Que.
Daniel Phillip Hays, <i>Speaker</i>	Calgary	Calgary, Alta.
Joyce Fairbairn, P.C.	Lethbridge	Lethbridge, Alta.
Colin Kenny	Rideau	Ottawa, Ont.
Pierre De Bané, P.C.	De la Vallière	Montreal, Que.
Eymard Georges Corbin	Grand-Sault	Grand-Sault, N.B.
Brenda Mary Robertson	Riverview	Shediac, N.B.
Norman K. Atkins	Markham	Toronto, Ont.
Ethel Cochrane	Newfoundland and Labrador	Port-au-Port, Nfld. & Lab.
Eileen Rossiter	Prince Edward Island	Charlottetown, P.E.I.
Mira Spivak	Manitoba	Winnipeg, Man.
Roch Bolduc	Gulf	Sainte-Foy, Que.
Gérald-A. Beaudoin	Rigaud	Hull, Que.
Pat Carney, P.C.	British Columbia	Vancouver, B.C.
Gerald J. Comeau	Nova Scotia	Church Point, N.S.
Consiglio Di Nino	Ontario	Downsview, Ont.
Donald H. Oliver	Nova Scotia	Halifax, N.S.
Noël A. Kinsella	Fredericton-York-Sunbury	Fredericton, N.B.
John Buchanan, P.C.	Nova Scotia	Halifax, N.S.
John Lynch-Staunton	Grandville	Georgeville, Que.
James Francis Kelleher, P.C.	Ontario	Sault Ste. Marie, Ont.
J. Trevor Eyton	Ontario	Caledon, Ont.
Wilbert Joseph Keon	Ottawa	Ottawa, Ont.
Michael Arthur Meighen	St. Marys	Toronto, Ont.
J. Michael Forrestall	Dartmouth and Eastern Shore	Dartmouth, N.S.
Janis G. Johnson	Winnipeg-Interlake	Gimli, Man.
A. Raynell Andreychuk	Regina	Regina, Sask.
Jean-Claude Rivest	Stadacona	Quebec, Que.
Terrance R. Stratton	Red River	St. Norbert, Man.
Marcel Prud'homme, P.C.	La Salle	Montreal, Que.
Leonard J. Gustafson	Saskatchewan	Macoun, Sask.
David Tkachuk	Saskatchewan	Saskatoon, Sask.
W. David Angus	Alma	Montreal, Que.
Pierre Claude Nolin	De Salaberry	Quebec, Que.
Marjory LeBreton	Ontario	Manotick, Ont.



Senator	Designation	Post Office Address
erry St. Germain, P.C.	Langley-Pemberton-Whistler	Maple Ridge, B.C.
e Bacon	De la Durantaye	Laval, Que.
ron Carstairs, P.C.	Manitoba	Victoria Beach, Man.
ndon Pearson	Ontario	Ottawa, Ont.
n-Robert Gauthier	Ottawa-Vanier	Ottawa, Ont.
n G. Bryden	New Brunswick	Bayfield, N.B.
se-Marie Losier-Cool	Tracadie	Bathurst, N.B.
ine Hervieux-Payette, P.C.	Bedford	Montreal, Que.
liam H. Rompkey, P.C.	Labrador	North West River, Labrador, Nfld. & Lab.
na Milne	Peel County	Brampton, Ont.
rie-P. Poulin	Nord de l'Ontario/Northern Ontario	Ottawa, Ont.
rley Maheu	Rougemont	Saint-Laurent, Que.
fred P. Moore	Stanhope St./Bluenose	Chester, N.S.
ie Pépin	Shawinigan	Montreal, Que.
nand Robichaud, P.C.	New Brunswick	Saint-Louis-de-Kent, N.B.
herine S. Callbeck	Prince Edward Island	Central Bedeque, P.E.I.
risa Ferretti Barth	Repentigny	Pierrefonds, Que.
ge Joyal, P.C.	Kennebec	Montreal, Que.
lma J. Chalifoux	Alberta	Morinville, Alta.
n Cook	Newfoundland and Labrador	St. John's, Nfld. & Lab.
s Fitzpatrick	Okanagan-Similkameen	Kelowna, B.C.
ncis William Mahovich	Toronto	Toronto, Ont.
hard H. Kroft	Manitoba	Winnipeg, Man.
glas James Roche	Edmonton	Edmonton, Alta.
n Thorne Fraser	De Lorimier	Montreal, Que.
élien Gill	Wellington	Mashteuiatsh, Pointe-Bleue, Que.
ienne Poy	Toronto	Toronto, Ont.
e Christensen	Yukon Territory	Whitehorse, Y.T.
orge Furey	Newfoundland and Labrador	St. John's, Nfld. & Lab.
k G. Sibbeston	Northwest Territories	Fort Simpson, N.W.T.
el Finnerty	Ontario	Burlington, Ont.
n Wiebe	Saskatchewan	Swift Current, Sask.
nmy Banks	Alberta	Edmonton, Alta.
e Cordy	Nova Scotia	Dartmouth, N.S.
s Morin	Lauzon	Quebec, Que.
abeth M. Hubley	Prince Edward Island	Kensington, P.E.I.
rier L. LaPierre	Ontario	Ottawa, Ont.
la Léger	Acadie/New Brunswick	Moncton, N.B.
bina S. B. Jaffer	British Columbia	North Vancouver, B.C.
n Lapointe	Saurel	Magog, Que.
ard A. Phalen	Nova Scotia	Glace Bay, N.S.
eph A. Day	Saint John-Kennebecasis	Hampton, N.B.
hel Biron	Mille Isles	Nicolet, Que.
orge S. Baker, P.C.	Newfoundland and Labrador	Gander, Nfld. & Lab.
ymond Lavigne	Montarville	Verdun, Que.
id P. Smith, P.C.	Cobourg	Toronto, Ont.
ria Chaput	Manitoba	Sainte-Anne, Man.
a Merchant	Saskatchewan	Regina, Sask.
rette Ringuette	New Brunswick	Edmundston, N.B.
cy Downe	Prince Edward Island	Charlottetown, P.E.I.
l J. Massicotte	De Lanaudière	Mont-Royal, Que.
c Harb	Ontario	Ottawa, Ont.
deleine Plamondon	The Laurentides	Shawinigan, Que.
rielyn Trenholme Counsell	New Brunswick	Sackville, N.B.

## SENATORS OF CANADA

## ALPHABETICAL LIST

(October 1, 2003)

Senator	Designation	Post Office Address	Political Affiliation
THE HONOURABLE			
Adams, Willie	Nunavut	Rankin Inlet, Nunavut	Lib
Andreychuk, A. Raynell	Regina	Regina, Sask.	PC
Angus, W. David	Alma	Montreal, Que.	PC
Atkins, Norman K.	Markham	Toronto, Ont.	PC
Austin, Jack, P.C.	Vancouver South	Vancouver, B.C.	Lib
Bacon, Lise	De la Durantaye	Laval, Que.	Lib
Baker, George S., P.C.	Newfoundland and Labrador	Gander, Nfld. & Lab.	Lib
Banks, Tommy	Alberta	Edmonton, Alta.	Lib
Beaudoin, Gérard-A.	Rigaud	Hull, Que.	PC
Biron, Michel	Mille Isles	Nicolet, Que.	Lib
Bryden, John G.	New Brunswick	Bayfield, N.B.	Lib
Buchanan, John, P.C.	Halifax	Halifax, N.S.	PC
Callbeck, Catherine S.	Prince Edward Island	Central Bedeque, P.E.I.	Lib
Carney, Pat, P.C.	British Columbia	Vancouver, B.C.	PC
Carstairs, Sharon, P.C.	Manitoba	Victoria Beach, Man.	Lib
Chalifoux, Thelma J.	Alberta	Morinville, Alta.	Lib
Chaput, Maria	Manitoba	Sainte-Anne, Man.	Lib
Christensen, Ione	Yukon Territory	Whitehorse, Y.T.	Lib
Cochrane, Ethel	Newfoundland and Labrador	Port-au-Port, Nfld. & Lab.	PC
Comeau, Gerald J.	Nova Scotia	Church Point, N.S.	PC
Cook, Joan	Newfoundland and Labrador	St. John's, Nfld. & Lab.	Lib
Cools, Anne C.	Toronto-Centre-York	Toronto, Ont.	Lib
Corbin, Eymard Georges	Grand-Sault	Grand-Sault, N.B.	Lib
Cordy, Jane	Nova Scotia	Dartmouth, N.S.	Lib
Day, Joseph A.	Saint John-Kennebecasis	Hampton, N.B.	Lib
De Bané, Pierre, P.C.	De la Vallière	Montreal, Que.	Lib
Di Nino, Consiglio	Ontario	Downsview, Ont.	PC
Doody, C. William	Harbour Main-Bell Island	St. John's, Nfld. & Lab.	PC
Downe, Percy	Prince Edward Island	Charlottetown, P.E.I.	PC
Eyton, J. Trevor	Ontario	Caledon, Ont.	PC
Fairbairn, Joyce, P.C.	Lethbridge	Lethbridge, Alta.	Lib
Ferretti Barth, Marisa	Repentigny	Pierrefonds, Que.	Lib
Finnerty, Isobel	Ontario	Burlington, Ont.	Lib
Fitzpatrick, Ross	Okanagan-Similkameen	Kelowna, B.C.	Lib
Forrestall, J. Michael	Dartmouth and the Eastern Shore	Dartmouth, N.S.	PC
Fraser, Joan Thorne	De Lorimier	Montreal, Que.	Lib
Furey, George	Newfoundland and Labrador	St. John's, Nfld. & Lab.	Lib
Gauthier, Jean-Robert	Ottawa-Vanier	Ottawa, Ont.	Lib
Gill, Aurélien	Wellington	Mashteuiatsh, Pointe-Bleue, Que.	Lib
Grafstein, Jerahmiel S.	Metro Toronto	Toronto, Ont.	Lib
Graham, Bernard Alasdair, P.C.	The Highlands	Sydney, N.S.	Lib
Gustafson Leonard J.	Saskatchewan	Macoun, Sask.	PC
Harb, Mac.	Ontario	Ottawa, Ont.	Lib
Hays, Daniel Phillip, <i>Speaker</i>	Calgary	Calgary, Alta.	Lib
Hervieux-Payette, Céline, P.C.	Bedford	Montreal, Que.	Lib
Hubley, Elizabeth M.	Prince Edward Island	Kensington, P.E.I.	Lib
Jaffer, Mobina S. B.	British Columbia	North Vancouver, B.C.	Lib



Senator	Designation	Post Office Address	Political Affiliation
Johnson, Janis G.	Winnipeg-Interlake	Gimli, Man.	PC
Joyal, Serge, P.C.	Kennebec	Montreal, Que.	Lib
Kelleher, James Francis, P.C.	Ontario	Sault Ste. Marie, Ont.	PC
Kenny, Colin	Rideau	Ottawa, Ont.	Lib
Keon, Wilbert Joseph	Ottawa	Ottawa, Ont.	PC
Kinsella, Noël A.	Fredericton-York-Sunbury	Fredericton, N.B.	PC
Kirby, Michael	South Shore	Halifax, N.S.	Lib
Kolber, E. Leo	Victoria	Westmount, Que.	Lib
Kroft, Richard H.	Manitoba	Winnipeg, Man.	Lib
LaPierre, Laurier L.	Ontario	Ottawa, Ont.	Lib
Lapointe, Jean	Saurel	Magog, Que.	Lib
Lavigne, Raymond	Montarville	Verdun, Que.	Lib
Lawson, Edward M.	Vancouver	Vancouver, B.C.	Ind
LeBreton, Marjory	Ontario	Manotick, Ont.	PC
Léger, Viola	Acadie/New Brunswick	Moncton, N.B.	Lib
Losier-Cool, Rose-Marie	Tracadie	Bathurst, N.B.	Lib
Lynch-Staunton, John	Grandville	Georgeville, Que.	PC
Maheu, Shirley	Rougemont	Saint-Laurent, Que.	Lib
Mahovlich, Francis William	Toronto	Toronto, Ont.	Lib
Massicotte, Paul J.	De Lanaudière	Mont-Royal, Que.	Lib
Meighen, Michael Arthur	St. Marys	Toronto, Ont.	PC
Merchant, Pana	Saskatchewan	Regina, Sask.	Lib
Milne, Lorna	Peel County	Brampton, Ont.	Lib
Moore, Wilfred P.	Stanhope St./Bluenose	Chester, N.S.	Lib
Morin, Yves	Lauson	Quebec, Que.	Lib
Murray, Lowell, P.C.	Pakenham	Ottawa, Ont.	PC
Nolin, Pierre Claude	De Salaberry	Quebec, Que.	PC
Oliver, Donald H.	Nova Scotia	Halifax, N.S.	PC
Pearson, Landon	Ontario	Ottawa, Ontario	Lib
Pépin, Lucie	Shawinigan	Montreal, Que.	Lib
Phalen, Gerard A.	Nova Scotia	Glace Bay, N.S.	Lib
Pitfield, Peter Michael, P.C.	Ottawa-Vanier	Ottawa, Ont.	Ind
Plamondon, Madeleine	The Laurentides	Shawinigan, Que.	Ind
Poulin, Marie-P.	Nord de l'Ontario/Northern Ontario	Ottawa, Ont.	Lib
Poy, Vivienne	Toronto	Toronto, Ont.	Lib
Prud'homme, Marcel, P.C.	La Salle	Montreal, Que.	Ind
Ringuette, Pierrette	New Brunswick	Edmundston, N.B.	Lib
Rivest, Jean-Claude	Stadacona	Quebec, Que.	PC
Robertson, Brenda Mary	Riverview	Shediac, N.B.	PC
Robichaud, Fernand, P.C.	New Brunswick	Saint-Louis-de-Kent, N.B.	Lib
Roche, Douglas James	Edmonton	Edmonton, Alta.	Ind
Rompkey, William H., P.C.	Labrador	North West River, Labrador, Nfld. & Lab.	Lib
Rossiter, Eileen	Prince Edward Island	Charlottetown, P.E.I.	PC
St. Germain, Gerry, P.C.	Langley-Pemberton-Whistler	Maple Ridge, B.C.	CA
Sibbeston, Nick G.	Northwest Territories	Fort Simpson, N.W.T.	Lib
Smith, David P., P.C.	Cobourg	Toronto, Ont.	Lib
Sparrow, Herbert O.	Saskatchewan	North Battleford, Sask.	Lib
Spivak, Mira	Manitoba	Winnipeg, Man.	PC
Stollery, Peter Alan	Bloor and Yonge	Toronto, Ont.	Lib
Stratton, Terrance R.	Red River	St. Norbert, Man.	PC
Tkachuk, David	Saskatchewan	Saskatoon, Sask.	PC
Trenholme Counsell, Marilyn	New Brunswick	Sackville, N.B.	Lib
Watt, Charlie	Inkerman	Kuujuuaq, Que.	Lib
Wiebe, John	Saskatchewan	Swift Current, Sask.	Lib

# SENATORS OF CANADA

## BY PROVINCE AND TERRITORY

(October 1, 2003)

### ONTARIO—24

Senator	Designation	Post Office Address
THE HONOURABLE		
1 Lowell Murray, P.C.	Pakenham	Ottawa
2 Peter Alan Stollery	Bloor and Yonge	Toronto
3 Peter Michael Pitfield, P.C.	Ottawa-Vanier	Ottawa
4 Jeremiah S. Grafstein	Metro Toronto	Toronto
5 Anne C. Cools	Toronto-Centre-York	Toronto
6 Colin Kenny	Rideau	Ottawa
7 Norman K. Atkins	Markham	Toronto
8 Consiglio Di Nino	Ontario	Downsview
9 James Francis Kelleher, P.C.	Ontario	Sault Ste. Marie
10 John Trevor Eyton	Ontario	Caledon
11 Wilbert Joseph Keon	Ottawa	Ottawa
12 Michael Arthur Meighen	St. Marys	Toronto
13 Marjory LeBreton	Ontario	Manotick
14 Landon Pearson	Ontario	Ottawa
15 Jean-Robert Gauthier	Ottawa-Vanier	Ottawa
16 Lorna Milne	Peel County	Brampton
17 Marie-P. Poulin	Northern Ontario	Ottawa
18 Francis William Mahovlich	Toronto	Toronto
19 Vivienne Poy	Toronto	Toronto
20 Isobel Finnerty	Ontario	Burlington
21 Laurier L. LaPierre	Ontario	Ottawa
22 David P. Smith, P.C.	Cobourg	Toronto
23 Mac Harb	Ontario	Ottawa
24		



## SENATORS BY PROVINCE AND TERRITORY

## QUEBEC—24

Senator	Designation	Post Office Address
THE HONOURABLE		
1 E. Leo Kolber	Victoria	Westmount
2 Charlie Watt	Inkerman	Kuujuuaq
3 Pierre De Bané, P.C.	De la Vallière	Montreal
4 Gérard-A. Beaudoin	Rigaud	Hull
5 John Lynch-Staunton	Grandville	Georgeville
6 Jean-Claude Rivest	Stadacona	Quebec
7 Marcel Prud'homme, P.C.	La Salle	Montreal
8 W. David Angus	Alma	Montreal
9 Pierre Claude Nolin	De Salaberry	Quebec
10 Lise Bacon	De la Durantaye	Laval
11 Céline Hervieux-Payette, P.C.	Bedford	Montreal
12 Shirley Maheu	Rougemont	Ville de Saint-Laurent
13 Lucie Pépin	Shawinigan	Montreal
14 Marisa Ferretti Barth	Repentigny	Pierrefonds
15 Serge Joyal, P.C.	Kennebec	Montreal
16 Joan Thorne Fraser	De Lorimier	Montreal
17 Aurélien Gill	Wellington	Mashteuiatsh, Pointe-Bleue
18 Yves Morin	Lauzon	Quebec
19 Jean Lapointe	Saurel	Magog
20 Michel Biron	Milles Isles	Nicolet
21 Raymond Lavigne	Montarville	Verdun
22 Paul J. Massicotte	De Lanaudière	Mont-Royal
23 Madeleine Plamondon	The Laurentides	Shawinigan
24		

## SENATORS BY PROVINCE-MARITIME DIVISION

## NOVA SCOTIA—10

Senator	Designation	Post Office Address
THE HONOURABLE		
1 Bernard Alasdair Graham, P.C. ....	The Highlands .....	Sydney
2 Michael Kirby .....	South Shore .....	Halifax
3 Gerald J. Comeau .....	Nova Scotia .....	Church Point
4 Donald H. Oliver .....	Nova Scotia .....	Halifax
5 John Buchanan, P.C. ....	Halifax .....	Halifax
6 J. Michael Forrestall .....	Dartmouth and Eastern Shore .....	Dartmouth
7 Wilfred P. Moore .....	Stanhope St./Bluenose .....	Chester
8 Jane Cordy .....	Nova Scotia .....	Dartmouth
9 Gerard A. Phalen .....	Nova Scotia .....	Glace Bay
10 .....	.....	.....

## NEW BRUNSWICK—10

Senator	Designation	Post Office Address
THE HONOURABLE		
1 Eymard Georges Corbin .....	Grand-Sault .....	Grand-Sault
2 Brenda Mary Robertson .....	Riverview .....	Shediac
3 Noël A. Kinsella .....	Fredericton-York-Sunbury .....	Fredericton
4 John G. Bryden .....	New Brunswick .....	Bayfield
5 Rose-Marie Losier-Cool .....	Tracadie .....	Bathurst
6 Fernand Robichaud, P.C. ....	Saint-Louis-de-Kent .....	Saint-Louis-de-Kent
7 Viola Léger .....	Acadie/New Brunswick .....	Moncton
8 Joseph A. Day .....	Saint John-Kennebecasis .....	Hampton
9 Pierrette Ringuette .....	New Brunswick .....	Edmundston
10 Marilyn Trenholme Counsell .....	New Brunswick .....	Sackville

## PRINCE EDWARD ISLAND—4

Senator	Designation	Post Office Address
THE HONOURABLE		
1 Eileen Rossiter .....	Prince Edward Island .....	Charlottetown
2 Catherine S. Callbeck .....	Prince Edward Island .....	Central Bedeque
3 Elizabeth M. Hubley .....	Prince Edward Island .....	Kensington
4 Percy Downe .....	Prince Edward Island .....	Charlottetown



## SENATORS BY PROVINCE-WESTERN DIVISION

## MANITOBA—6

Senator	Designation	Post Office Address
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## THE HONOURABLE

1 Mira Spivak . . . . .	Manitoba . . . . .	Winnipeg
2 Janis G. Johnson . . . . .	Winnipeg-Interlake . . . . .	Gimli
3 Terrance R. Stratton . . . . .	Red River . . . . .	St. Norbert
4 Sharon Carstairs, P.C. . . . .	Manitoba . . . . .	Victoria Beach
5 Richard H. Kroft . . . . .	Manitoba . . . . .	Winnipeg
6 Maria Chaput . . . . .	Manitoba . . . . .	Sainte-Anne

## BRITISH COLUMBIA—6

Senator	Designation	Post Office Address
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## THE HONOURABLE

1 Edward M. Lawson . . . . .	Vancouver . . . . .	Vancouver
2 Jack Austin, P.C. . . . .	Vancouver South . . . . .	Vancouver
3 Pat Carney, P.C. . . . .	British Columbia . . . . .	Vancouver
4 Gerry St. Germain, P.C. . . . .	Langley-Pemberton-Whistler . . . . .	Maple Ridge
5 Ross Fitzpatrick . . . . .	Okanagan-Similkameen . . . . .	Kelowna
6 Mobina S.B. Jaffer . . . . .	British Columbia . . . . .	North Vancouver

## SASKATCHEWAN—6

Senator	Designation	Post Office Address
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## THE HONOURABLE

1 Herbert O. Sparrow . . . . .	Saskatchewan . . . . .	North Battleford
2 A. Raynell Andreychuk . . . . .	Regina . . . . .	Regina
3 Leonard J. Gustafson . . . . .	Saskatchewan . . . . .	Macoun
4 David Tkachuk . . . . .	Saskatchewan . . . . .	Saskatoon
5 John Wiebe . . . . .	Saskatchewan . . . . .	Swift Current
6 Pana Merchant . . . . .	Saskatchewan . . . . .	Regina

## ALBERTA—6

Senator	Designation	Post Office Address
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## THE HONOURABLE

1 Daniel Phillip Hays, <i>Speaker</i> . . . . .	Calgary . . . . .	Calgary
2 Joyce Fairbairn, P.C. . . . .	Lethbridge . . . . .	Lethbridge
3 Thelma J. Chalifoux . . . . .	Alberta . . . . .	Morinville
4 Douglas James Roche . . . . .	Edmonton . . . . .	Edmonton
5 Tommy Banks . . . . .	Alberta . . . . .	Edmonton
6 . . . . .	. . . . .	. . . . .

## SENATORS BY PROVINCE AND TERRITORY

## NEWFOUNDLAND AND LABRADOR—6

Senator	Designation	Post Office Address
THE HONOURABLE		
1 C. William Doody	Harbour Main-Bell Island	St. John's
2 Ethel Cochrane	Newfoundland and Labrador	Port-au-Port
3 William H. Rompkey, P.C.	Labrador	North West River, Labrador
4 Joan Cook	Newfoundland and Labrador	St. John's
5 George Furey	Newfoundland and Labrador	St. John's
6 George S. Baker, P.C.	Newfoundland and Labrador	Gander

## NORTHWEST TERRITORIES—1

Senator	Designation	Post Office Address
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1 Nick G. Sibbeston	Northwest Territories	Fort Simpson

## NUNAVUT—1

Senator	Designation	Post Office Address
THE HONOURABLE		
1 Willie Adams	Nunavut	Rankin Inlet

## YUKON TERRITORY—1

Senator	Designation	Post Office Address
THE HONOURABLE		
1 Ione Christensen	Yukon Territory	Whitehorse



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(As of October 1, 2003)

Ex Officio Member

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Day,	LaPierre,	Oliver,	

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*Original Members as nominated by the Committee of Selection*

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Deputy Chair: Honourable Senator Spivak

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Banks,	Cochrane,	* Lynch-Staunton,	Spivak,
Buchanan,	Eyton,	(or Kinsella)	Watt.
* Carstairs,	Finnerty,	Merchant,	
(or Robichaud)			

*Original Members as nominated by the Committee of Selection*

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Baker,	Comeau,	* Lynch-Staunton,	Phalen,
* Carstairs,	Cook,	(or Kinsella)	Trenholme-Counsell,
(or Robichaud)	Hubley,	Mahovlich,	Watt.

*Original Members as nominated by the Committee of Selection*

*Adams, Baker, \*Carstairs (or Robichaud), Cochrane, Comeau, Cook, Hubley, Johnson, \*Lynch-Staunton (or Kinsella), Mahovlich, Moore, Phalen, Robertson, Watt*

## FOREIGN AFFAIRS

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Deputy Chair: Honourable Senator Di Nino

## Honourable Senators:

Andreychuk,	Corbin,	Grafstein,	* Lynch-Staunton,
Austin,	De Bané,	Graham,	(or Kinsella)
Carney,	Di Nino,	Losier-Cool,	Mahovlich,
* Carstairs,	Eyton		Stollery.
(or Robichaud)			

*Original Members as nominated by the Committee of Selection*

*Andreychuk, Austin, Bolduc, Carney, \*Carstairs (or Robichaud), Corbin, De Bané, Di Nino, Grafstein, Graham, Losier-Cool, \*Lynch-Staunton (or Kinsella), Setlakwe, Stollery.*



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Deputy Chair: Honourable Senator Rossiter

Honourable Senators:

Beaudoin,	Ferretti Barth,	LaPierre,	Maheu,
Carstairs,	Jaffer,	* Lynch-Staunton,	Rivest,
(or Robichaud)	Joyal,	(or Kinsella)	Rossiter.
Chalifoux,			

*Original Members as nominated by the Committee of Selection*

Beaudoin, \*Carstairs (or Robichaud), Ferretti Barth, Fraser, Jaffer, LaPierre,  
\*Lynch-Staunton (or Kinsella), Maheu, Poy, Rivest, Rossiter.

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Interim Deputy Chair: Honourable Senator Robertson

Honourable Senators:

Atkins,	* Carstairs,	Gill,	Ringuette,
Austin,	(or Robichaud)	Jaffer,	Robertson,
Bacon,	De Bané,	* Lynch-Staunton,	Robichaud,
Bolduc,	Eyton,	(or Kinsella)	Stratton.
Bryden,	Gauthier,	Poulin,	

*Original Members as nominated by the Committee of Selection*

Angus, Atkins, Austin, \*Carstairs (or Robichaud), Bacon, Bryden, De Bané, Doody, Eyton, Gauthier,  
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Beaudoin,	Cools,	* Lynch-Staunton,	Smith.
Bryden,	Furey,	(or Kinsella)	
Buchanan,			

*Original Members as nominated by the Committee of Selection*

Andreychuk, Baker, Beaudoin, Bryden, Buchanan, \*Carstairs (or Robichaud), Cools, Furey,  
Jaffer, Joyal, \*Lynch-Staunton (or Kinsella), Nolin, Pearson, Smith.

## LIBRARY OF PARLIAMENT (Joint)

Joint Chair:

Vice-Chair:

Honourable Senators:

Bolduc, Forrestall,	Lapointe,	Morin,	Poy.
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*Original Members agreed to by Motion of the Senate**Bolduc, Forrestall, Lapointe, Morin, Poy.*

## NATIONAL FINANCE

Chair: Honourable Senator Murray

Deputy Chair: Honourable Senator Day

Honourable Senators:

Biron, * Carstairs, (or Robichaud) Comeau,	Day, Doody, Ferretti Barth, Finnerty,	Furey, Gauthier, * Lynch-Staunton, (or Kinsella)	Mahovlich, Murray, Oliver, Ringuette.
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*Original Members as nominated by the Committee of Selection**Biron, Bolduc, \*Carstairs (or Robichaud), Cools, Day, Doody, Eyton, Ferretti Barth, Finnerty, Furey, Gauthier, \*Lynch-Staunton (or Kinsella), Mahovlich, Murray.*

## NATIONAL SECURITY AND DEFENCE

Chair: Honourable Senator Kenny

Deputy Chair: Honourable Senator Forrestall

Honourable Senators:

Atkins, Banks, * Carstairs, (or Robichaud)	Cordy, Day, Forrestall,	Kenny, * Lynch-Staunton, (or Kinsella)	Meighen, Smith, Wiebe.
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*Original Members as nominated by the Committee of Selection**Atkins, Banks, \*Carstairs (or Robichaud), Cordy, Day, Forrestall, Kenny, \*Lynch-Staunton (or Kinsella), Meighen, Smith, Wiebe.*



## VETERANS AFFAIRS

(Subcommittee of National Security and Defence)

Chair: Honourable Senator Meighen

Deputy Chair: Honourable Senator Day

Honourable Senators:

Atkins,  
Carstairs,  
(or Robichaud)

Day,  
Kenny,

\* Lynch-Staunton,  
(or Kinsella)

Meighen,  
Wiebe.

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Deputy Chair: Honourable Senator Keon

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Carstairs,  
(or Robichaud)  
Chaput,

Comeau,  
Gauthier,  
Keon,

Lapointe,  
Léger,  
Losier-Cool,

\* Lynch-Staunton,  
(or Kinsella)  
Maheu.

*Original Members agreed to by Motion of the Senate*

*Beaudoin, \*Carstairs (or Robichaud), Comeau, Ferretti Barth, Gauthier, Keon, Lapointe,  
Léger, Losier-Cool, \*Lynch-Staunton (or Kinsella), Maheu.*

## RULES, PROCEDURES AND THE RIGHTS OF PARLIAMENT

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Deputy Chair: Honourable Senator Andreychuk

Honourable Senators:

Andreychuk,  
Carstairs,  
(or Robichaud)  
Cordy,  
Di Nino,

Downe,  
Fraser,  
Grafstein,  
Hubley,  
Joyal,

\* Lynch-Staunton,  
(or Kinsella)  
Milne,  
Murray,  
Ringuette,

Rompkey,  
Robichaud,  
Smith,  
Stratton.

*Original Members as nominated by the Committee of Selection*

*Andreychuk, Bacon, \*Carstairs (or Robichaud), Di Nino, Grafstein, Joyal, Losier-Cool,  
\*Lynch-Staunton (or Kinsella), Milne, Murray, Pépin, Pitfield, Robertson,  
Rompkey, Smith, Stratton, Wiebe.*

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**Joint Chair: Honourable Hervieux-Payette**

**Vice-Chair:**

**Honourable Senators:**

Biron,	Hervieux-Payette,	Moore,	Nolin.
Harb,	Kelleher,		

*Original Members as agreed to by Motion of the Senate*

*Biron, Hervieux-Payette, Hubley, Kelleher, Moore, Nolin, Phalen.*

### SELECTION

**Chair: Honourable Senator Rompkey**

**Deputy Chair: Honourable Senator Stratton**

**Honourable Senators:**

Biron,	De Bané,	Kolber,	Rompkey,
* Carstairs,	Fairbairn,	LeBreton,	Stratton,
(or Robichaud)	Kinsella,	* Lynch-Staunton,	Tkachuk.
		(or Kinsella)	

*Original Members agreed to by Motion of the Senate*

*Bacon, \*Carstairs, (or Robichaud), De Bané, Fairbairn, Kinsella, Kolber, LeBreton, \*Lynch-Staunton, (or Kinsella), Rompkey, Stratton, Tkachuk.*

### SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

**Chair: Honourable Senator Kirby**

**Deputy Chair: Honourable Senator LeBreton**

**Honourable Senators:**

Callbeck,	Fairbairn,	Léger,	Robertson,
* Carstairs,	Keon,	* Lynch-Staunton,	Roche,
(or Robichaud)	Kirby,	(or Kinsella)	Rossiter
Cordy,	LeBreton,	Morin,	Trenholme-Counsell.

*Original Members as nominated by the Committee of Selection*

*Callbeck \*Carstairs (or Robichaud), Cook, Cordy, Di Nino Fairbairn, Keon, Kirby, LeBreton, \*Lynch-Staunton (or Kinsella), Morin, Pépin, Robertson, Roche.*



## TRANSPORT AND COMMUNICATIONS

Chair: Honourable Senator Fraser

Deputy Chair: Honourable Senator Gustafson

## Honourable Senators:

dams,  
arstairs,  
(or Robichaud)  
orbin

Day,  
Eyton,  
Fraser,  
Graham,

Gustafson,  
Johnson,  
LaPierre,  
\* Lynch-Staunton,  
(or Kinsella)

Merchant,  
Phalen,  
Spivak.

*Original Members as nominated by the Committee of Selection*

*Adams, Biron, Callbeck, \*Carstairs (or Robichaud), Day, Eyton, Fraser,  
Graham, Gustafson, Johnson, LaPierre,\*Lynch-Staunton (or Kinsella), Phalen, Spivak.*

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CANADA

# Debates of the Senate

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2nd SESSION

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37th PARLIAMENT

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VOLUME 140

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NUMBER 81

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OFFICIAL REPORT  
(HANSARD)

Thursday, October 2, 2003

THE HONOURABLE DAN HAYS  
SPEAKER



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(Daily index of proceedings appears at back of this issue).

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## THE SENATE

Thursday, October 2, 2003

The Senate met at 1:30 p.m., the Speaker in the Chair.

Prayers.

### SENATORS' STATEMENTS

#### NATIONAL DEFENCE

##### AFGHANISTAN—DEATH OF TWO SOLDIERS

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, it is with a great deal of sadness that I inform the chamber of the death of two Canadian soldiers in Kabul earlier this morning, Ottawa time. Sergeant Robert Alan Short and Corporal Robbie Christopher Beerenfenger were killed while on a patrol. Three other soldiers were injured: Master Corporal Jason Cory Hamilton, Corporal Thomas Jarrett Stirling and Corporal Cameron Lee Laidlaw.

Honourable senators, when the decision was made to deploy troops to Afghanistan, it was made knowing that this would be a very difficult mission, but it was part of our commitment to the war on terrorism.

At the present time, the army in Afghanistan is clearly focusing on returning the deceased with dignity, so that they can be given back to the families who love them so dearly, so that we can say farewell with respect and, of course, to ensure that those who have been injured have access to the best possible medical treatment.

Honourable senators, I know that all of you will join me in offering our prayers and our sorrow to the families of those who have died, and our deep hope that those who have been injured will be successful in dealing with their injuries.

**Hon. Norman K. Atkins:** Honourable senators, on behalf of those on this side, I want to thank the Leader of the Government in the Senate for her comments.

Canada's military has been at the forefront of the fight on terrorism. Our soldiers, sailors and airmen have all shown tremendous courage in the efforts of the international coalition to defeat terrorism that so threatens our society.

Today, these brave soldiers paid the ultimate price for their conviction that freedom, and not tyranny, must reign. We extend our grief and most sincere condolences to the families of those who made the supreme sacrifice. We express our hope that the injured soldiers will recover quickly and return to their families. Canada owes a debt to these brave men, and we will not forget their sacrifice.

[Later]

**Hon. Douglas Roche:** Honourable senators, I want to join with Senator Carstairs and Senator Atkins in expressing sorrow at the

death of two Canadian soldiers, and the wounding of three more, when their vehicle struck an explosive mine device in Afghanistan.

Our first thoughts are with those who died, and we send our condolences to their families and loved ones. I believe that Prime Minister Chrétien spoke for all Canadians when he said, a little while ago, that the news today is a painful reminder that defending our values and doing our duty can come with a very high price.

Honourable senators, I want at this moment to give my own support to the Canadian Forces personnel who are in this most difficult situation in Afghanistan. In war and its aftermath, it is always human beings who die and suffer. That is the relentless fact that has been driven home to us today.

What we must take from this sad moment is a renewed dedication and commitment to strengthening the international processes of law to respond to the new kinds of threats that terrorists represent. That is the true route to peace and security.

**The Hon. the Speaker:** Honourable senators, I have received a request that we pay our respects to those we have lost, and those on whom Senators Carstairs and Atkins have commented. I would propose to do so now. We will then continue with Senators' Statements. Some may wish to comment on the same subject, but I believe, having heard from the two sides, that it is now appropriate for me to respond to the request that I have received and, with your leave, we will now observe a minute's silence.

**Senator Prud'homme:** Absolutely.

*Honourable senators then stood in silent tribute.*

#### AGRICULTURE AND AGRI-FOOD

##### BOVINE SPONGIFORM ENCEPHALOPATHY—UNITED STATES TRADE RESTRICTIONS

**Hon. Gerry St. Germain:** Honourable senators, since the discovery of a single cow with BSE in Alberta on May 20, the borders remain closed to live Canadian cattle. Live cattle represent more than 40 per cent of our beef exports, or about \$1.8 billion annually.

Permits became available from the United States on August 11, to export veal and boneless beef products from animals less than 30 months old. In the first two weeks, 18 million pounds crossed the border. Under normal circumstances, 26 million pounds would have been exported in the same time period, but this only counts one category of export. The total export market for all beef products was \$4.5 billion in 2002, 80 per cent of which was to the U.S.



• (1340)

Since May 20, this situation has cost producers \$11 million per day in lost exports and \$7 million per day in collapsed prices. Producers have been hit with a triple whammy: They cannot sell abroad, and when they can sell, the price is down. Cows are coming off pasture and must be fed or disposed of. Revenues are down while costs continue to pile up. Options and time are running out for these people.

The ripple effects are many and wide. Suppliers and dealers are feeling the pinch. Layoffs continue in the packing industry. The dairy industry complains they cannot dispose of their culled cows, while their members must feed and milk their existing herds. Other ruminant ranchers of elk, sheep and bison are caught up in the border situation.

The government announced a federal-provincial program of up to \$460 million that expired August 30. Little of that money has ever reached the producers because it has been caught up in politics and bureaucracy.

The Minister of Agriculture insisted that the provinces sign on to his unpopular agriculture policy framework before money would flow. He announced \$600 million as a second instalment of the transitional funding, but this does little for the beef industry. It mostly goes into NISA, the Net Income Stabilization Account, which is difficult to trigger and will not release funds until the spring of 2004.

The minister has bragged that he formed a beef value roundtable with industry representation, but I do not believe he has responded to it in a positive way. The industry does not want handouts; it wants a workable plan that will lead to a rational transition for producers. It wants alternative markets, conversion of excess beef to food aid, a contribution of \$330 per head for 10 per cent of the herd, which is the average cull. It has only had silence from the government on many of these issues. A partial opening of the border for one part of the industry hardly constitutes success, and the government has reacted slowly, moved uncertainly, and offered no answers for the future.

Honourable senators, I believe that this is an urgent situation, and it is urgent right across this country. It is not restricted to Western Canada — the region that I represent. Therefore I would urge the government to move as quickly as possible on a positive resolution.

## GOVERNOR GENERAL

### STATE VISIT TO RUSSIA

**Hon. Mira Spivak:** Honourable senators, Senator Pearson and I were privileged to be part of an imaginative state visit, intelligently conceived and brilliantly executed, in keeping with the unique and innovative interpretation of a dynamic role for the Governor General's office, initiated by the current holder of that office, the Right Honourable Adrienne Clarkson.

Briefly, that role is characterized by an expansion of the formal diplomatic state visit into a lively exchange of cultural, literary, political, economic and environmental views between eminent Canadians and their counterparts in foreign countries. This tour focused on the vision of the North — the Arctic and sub-Arctic regions — and, in particular, on the lives of the indigenous people who inhabit these regions in Canada and in Russia.

Another objective was to have a dialogue on federalism and democracy, particularly appropriate at this time as Russia is embarking on a reform of its federal structure.

The visit of the Governor General and our delegation was regarded as highly significant by the Russian political establishment and the press, and so forth, since it was the first visit by our head of state — that is, the Governor General — to Russia. About one third of the delegation came from the North, including Norma Kassis, whose passionate defence of the caribou in the ANWAR reserve stirred hearts, and Mary Simon, ambassador to the Inuit Circumpolar Conference.

In the beautiful region of Yamal-Nenets, touched with gold, the larch trees and the wild grasses, we exchanged views with the Nenets people and reindeer herders, political leaders, dancers and artists. We received a very sophisticated analysis of the region.

On the cultural front, Canadian talent was showcased by the screening of Denys Arcands' *Les invasions barbares* in Moscow, and the St. Petersburg premiere of La La La Human Steps, and also the publishing of Yann Martels' *Life of Pi* in Russian.

Several sessions were held on democracy and federalism, sparking a passionate outburst from a professor and a young student against heavy-handed central control. We were also privileged to hear from Aleksandr Nikitin, who was jailed for blowing the whistle on the dangers of nuclear submarines.

Another session dealt with the Kyoto protocol. When questioned directly, the Russian Prime Minister, not the President, indicated that Russia will sign but probably not until after the election. As well, Maurice Strong was able to put forward his solution to the North Korean energy problem to President Putin himself.

We met with top officials. We were dazzled by the glories of the Kremlin, the Hermitage, the cathedrals and the architecture of St. Petersburg.

Much was accomplished. Russians learned about the cultural and economic life of Canada. Northerners emphasized how much they have in common and the need for cooperation in the circumpolar region. It worked well, and it set a standard and heightened the influence of the newly appointed Canadian ambassador to Russia. Bilateral relations were strengthened, the profile of the North, its environment and economy, was raised, and we promoted Canada as a unique and different country.

I congratulate Her Excellency the Governor General and His Excellency John Ralston Saul. They are unabashed promoters of Canadian life and values, and they have forged a new instrument of diplomacy that will prove invaluable in the future.

**The Hon. the Speaker:** Honourable Senator Spivak, I regret to inform you that your time has expired.

[Translation]

## ROUTINE PROCEEDINGS

### PARLIAMENT OF CANADA ACT

#### BILL TO AMEND—FIRST READING

**The Hon. the Speaker** informed the Senate that a message had been received from the House of Commons with Bill C-34, An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence.

Bill read first time.

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the second time?

On motion of Senator Carstairs, bill placed on the Orders of the Day for second reading two days hence.

• (1350)

[English]

## FOREIGN AFFAIRS

### BUDGET ON STUDY OF TRADE RELATIONSHIPS WITH UNITED STATES AND MEXICO— REPORT OF COMMITTEE PRESENTED

Leave having been given to revert to Presentation of Reports from Standing or Special Committees:

**Hon. Peter A. Stollery,** Chair of the Standing Senate Committee on Foreign Affairs, presented the following report:

Thursday, October 2, 2003

The Standing Senate Committee on Foreign Affairs has the honour to present its

#### FIFTH REPORT

Your Committee, which was authorized by the Senate on Thursday, November 21, 2002 to examine and report upon the Canada — United States of America trade relationship and the Canada — Mexico trade relationship, respectfully requests approval of additional funds for 2003-2004.

[ Senator Spivak ]

Pursuant to section 2:07 of the *Procedural Guidelines for the Financial Operation of Senate Committees*, the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that Committee are appended to this report.

Respectfully submitted,

PETER A. STOLLERY  
Chair

**The Hon. the Speaker:** Honourable senators, when shall this report be taken into consideration?

On motion of Senator Stollery, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

(For text of report, see today's Journals of the Senate, p. 1119.)

[Translation]

### NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY POLICY ON ISRAELI-PALESTINIAN CONFLICT

**Hon. Eymard G. Corbin:** Honourable senators, I hereby give notice that, on Wednesday, October 8, 2003, I shall move:

That the Senate Standing Committee on Foreign Affairs undertake the examination of Canada's policy regarding the Israeli-Palestinian conflict and report no later than April 30th, 2004.

[English]

## QUESTION PERIOD

### IMMIGRATION AND CITIZENSHIP

#### FRAUDULENT STUDENT VISAS OBTAINED THROUGH EDUCATIONAL INSTITUTIONS

**Hon. A. Raynell Andreychuk:** Honourable senators, federal immigration officials have warned that the number of Canadian schools that sell fake documentation to foreign students have experienced considerable growth. These illegitimate, often fictitious schools not only assist illegal entry into Canada, but also take money from legitimate foreign students who have been fooled into paying tuition fees. The growth in the number of these so-called visa schools has been blamed on a jurisdictional gap: While the provinces are responsible for the individual schools, the federal government is responsible for issuing student visas. The inability to organize a collective response to this activity has therefore allowed the problem to grow.



My question is for the Leader of the Government in the Senate. Is the federal government looking for a way to better coordinate the student visa process with the provinces in order to crack down on the selling of fraudulent student documentation and thereby adding to the negative impacts of foreign students coming to Canada?

**Hon. Sharon Carstairs (Leader of the Government):** As the honourable senator knows, education is the constitutional prerogative of the provinces. They are the only entity that can license schools.

The Department of Citizenship and Immigration has concerns that these schools are producing this fake documentation, but it is clearly a difficult issue when they have absolutely no control over the licensing of these schools.

Having said that, the Department of Immigration wants to ensure that fake documentation is not provided. My understanding is that they will work with their provincial counterparts in the various departments of education to ensure that there is no longer a continuation of this practice since it is not only in the best interests of the provinces, but also clearly of the federal government.

**Senator Andreychuk:** Honourable senators, it is clear that education is a provincial matter. However, for many years there has been a recognized coordinating role for the federal government, including the fact that both at the ministerial and the provincial level, there are coordinating councils. With the consent of provinces, the federal government has played this coordination role of bringing ministers and bureaucrats together as necessary. My understanding is that this is an ongoing process.

The fraudulent activity of false documentation goes unnoticed because there is no approved master list of Canadian schools and universities that the immigration officials can check against when receiving student visa applications. To avoid these situations, would it not be in the best interests of Canadians and foreign students that the government exercise this coordinating role by working in conjunction with the provinces to create this master list of schools?

**Senator Carstairs:** I believe the honourable senator misunderstands the role of the federal government with respect to education. There is no coordinating role. There is the Council of Ministers of Education, but those ministers represent the provinces and the territories; they do not represent the federal government. The federal government is invited to attend, on occasion, and they do. However, the federal government does not play the principal role; the provinces, quite rightly, play the principal role. They are in charge of the Council of Ministers of Education, not the federal government.

**Senator Andreychuk:** Honourable senators, while the provinces may be in charge of the council of ministers, the federal government has been a part of the process. Surely on an issue of this importance the federal government is well within its rights to suggest and encourage the provincial governments to meet with federal authorities to solve this dilemma. In the end, we are talking about citizens, and citizens do not always mark themselves

as provincial or federal. Therefore, I think it would be very reasonable for the federal government to act. I would ask the federal government to identify this problem from a federal point of view and to encourage the provincial ministers to sit down with the federal minister in charge and to rectify this problem before it becomes so well-known in the international community that it damages our reputation and thwarts honest students from coming to Canada.

• (1400)

**Senator Carstairs:** The honourable senator has certainly used the correct words. They can suggest, and they have done so. They can encourage, and they have done so. However, they cannot dictate.

## AGRICULTURE AND AGRI-FOOD

### BOVINE SPONGIFORM ENCEPHALOPATHY— ASSISTANCE TO FARMERS

**Hon. Leonard J. Gustafson:** My question is to the Leader of the Government in the Senate regarding the serious problem the cattle industry is facing. I was in touch with the Assiniboia Livestock Auction, and they tell me that heifer calves are moving at 96 cents and steers at about \$1.05, which is not too bad. However, the minister will know that many of the cow-calf operators still have most of their calves on the farm and have not moved them. Their concern is that when the big push comes, there will be no place for these calves in the feedlots. Of course, exports of processed beef cannot stay ahead of what was happening when these operators were shipping live cattle across the border. Is the government looking ahead to the possibility of very serious problems in the market, as well as a problem of feed if the farmers have to keep these cattle over for the winter?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, the honourable senator opposite knows, of course, of the federal-provincial BSE recovery program, which has offered \$500 million in assistance since June. The Honourable Senator St. Germain placed some comments on the record earlier that, quite frankly, are not an accurate representation of the situation in my view. That program was not administered by governments; it was administered by the cattle producers' association, at their request, and it was the decision of the provinces, the territories and the federal government that they should do so.

The honourable senator knows that additional assistance for cattle producers is available through transitional funding. He also knows that the federal government is continuing to monitor the situation, particularly the market and feed issues that he has clearly identified.

**Senator Gustafson:** Honourable senators, according to the Assiniboia auction mart, no program is in place in regard to the current crop of cattle that are under 30 months of age. Is the government considering a program? I understand these programs were all phased out in August.

**Senator Carstairs:** My understanding, honourable senators, is that there could be a program under the APF agreement if all of the provinces were to sign and get on board, and the vast majority of them have done so. I am assuming that the auction market the honourable senator is referring to is in his home province of Saskatchewan, which, as he knows, is not one of the provinces that is on board. Meanwhile, the government continues to work with the provinces. A meeting was held last week between the federal, provincial and territorial agriculture ministers, and they are working together closely to ensure that we address these issues, including market-based solutions.

**Senator Gustafson:** Like the grain producers, they do not know where this program is at, quite frankly, if you talk to them. They are very confused about the program and whether any funds will ever come through.

#### BOVINE SPONGIFORM ENCEPHALOPATHY— UNITED STATES TRADE RESTRICTIONS

**Hon. Leonard J. Gustafson:** Honourable senators, some consideration has been given on both sides of this house to sending a high-level delegation to Washington because this crisis has become, in the minds of many, a political situation. Many of us thought that it would have been solved long ago. We only had one animal test positive. Is consideration being given to the political aspect of what is happening and to dispatching a high-level delegation? This situation just cannot continue.

**Hon. Sharon Carstairs (Leader of the Government):** I know the frustration that the honourable senator feels for those deeply engaged in this particular industry. Many in my own province are suffering from similar problems. However, we should recognize that over the next two years there will be \$1.2 billion of transitional funding, much of which can be used to alleviate the stress and strain that has resulted from BSE.

The provinces, in not signing agreements, make it impossible for that bridge funding to go forward. The money is there. We need to get the provinces on side in order to move it forward so that we can come up with more help for our provinces, particularly the beef-producing provinces in this country.

Honourable senators, there is no point in sending a high-level delegation to Washington unless there is genuine hope of success. I remember with interest the so-called high-level delegation led by Premier Ralph Klein. He was going down there to solve that problem. Well, that was some months ago, and unfortunately the problem was not solved.

It is important that we keep the channels of communication open between the United States and Canada on this very serious file, and I know that this is exactly what Minister of Agriculture Lyle Vanclief is doing.

**Senator Gustafson:** On the subject of a high-level delegation, no one in Canada can take the place of the Prime Minister. Perhaps we should call on him to lead the delegation. We will never know if we never try.

**Senator Carstairs:** I think the honourable senator opposite is well aware that when prime ministers, presidents, monarchs and other people of high state meet, they do so with lots of foresight

and planning and with a knowledge or at least a great hope that there will be a positive outcome. I would not want our Prime Minister going with any less an indication of success.

#### THE SENATE

##### LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE—STATUS OF MOTION TO REFER STUDY ON INCLUDING IN LEGISLATION NON-DEROGATION CLAUSES RELATING TO ABORIGINAL TREATY RIGHTS

**Hon. Eymard G. Corbin:** Honourable senators, my question is to the Leader of the Government. Yesterday, in her remarks concerning Bill C-10B, she referred to Motion No. 1 on the Order Paper:

That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report on the implications of including, in legislation, non-derogation clauses relating to existing aboriginal and treaty rights of the aboriginal peoples of Canada under s. 35 of the *Constitution Act*, 1982; and

That the Committee present its report no later than December 31, 2003.

Though the leader made reference to the existence of this motion, which I think would greatly clarify a number of matters pertaining to Bill C-10B, she has not, in her remarks, told the house why this motion is not moving forward. It would help a number of us achieve a better understanding of what is at issue if this matter could be resolved soon.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, it is my recollection that Senator Cools took the adjournment on this motion. If she would speak to it today, from our perspective it would be perfectly appropriate to call the question.

• (1410)

I may be mistaken in thinking that it was Senator Cools who took the adjournment of this order on the last occasion. It is a government motion, so that it does not show up in the record with Senator Cools' name attached. However, I did ask for that point to be clarified. If it was some other senator, then I would ask that senator please to speak to the matter or call for the question. I can certainly assure the honourable senator that the leadership will strongly support it; it was our motion.

#### HEALTH

##### SEVERE ACUTE RESPIRATORY SYNDROME— COMPENSATION PACKAGE TO ONTARIO

**Hon. Wilbert J. Keon:** Honourable senators, I have a question for the Leader of the Government in the Senate. The Ontario Nurses Association has said that the province is not prepared for a third outbreak of severe acute respiratory syndrome. The Province of Ontario is struggling to deal with the needs of its health care system in the wake of the outbreak, and has rejected the federal government's compensation package of \$250 million as being insufficient.



My question is for the Leader of the Government in the Senate: In light of the nurses' claim about the fragility of the health care system, will the federal government offer a more suitable amount of compensation to Ontario?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, there are two parts to the honourable senator's question: One is with regard to the fragility clearly identified by the nurses and their concern that we have not put into place resources for another outbreak of this nature, be it SARS or something else; that we do not have the teams in place for success. As the honourable senator knows, the Naylor report is expected — literally — momentarily. I understand it is in translation. As soon as it is completely translated, it will be distributed. As the Dean of Medicine at the University of Toronto, Dr. Naylor was asked, with his committee, to specifically look at what could be done differently in the future. We look forward to that report.

In terms of compensation, the honourable senator knows full well that the federal government has put money on the table. The Province of Ontario has not accepted that money. In light of what might happen in the Province of Ontario today, we may see money flowing to that province quickly.

#### SEVERE ACUTE RESPIRATORY SYNDROME— TRAVELLER-SCREENING PROCESS

**Hon. Wilbert J. Keon:** Honourable senators, I have a supplementary question. The Ontario Minister of Health has begun to examine the creation of a second traveller-screening process for infectious diseases at Pearson International Airport. That is being done because the Ontario Health Minister, Tony Clement, has said that he does not believe the federal government is doing enough to protect against the possible re-emergence of SARS in this country during the fall and winter 'flu season. There is some real apprehension about another wave.

Can the Leader of the Government in the Senate tell us if the federal government is making any changes to its passenger-screening procedures as a result of this development?

**Hon. Sharon Carstairs (Leader of the Government):** As the honourable senator knows, one of the issues raised over and over in this chamber was the need for scanners. Those scanners were put into place. My information is that they did not identify a single case of SARS. Those scanners are still in place. The other processes are still in place. If you venture into the Toronto airport today, you can still see the pink cards on display, giving information to individuals. At least they were there two weeks ago, so I assume they are still there.

Quite frankly, I believe the current screening process is appropriate. The Naylor report may comment on this as well. I do not know; I have not seen the report. However, I can assure honourable senators that the federal government welcomes this report and will move swiftly on the recommendations.

#### OFFICE OF PRIVACY COMMISSIONER

##### AUDITOR GENERAL'S REPORT— INVESTIGATION OF FINANCIAL REPORTING

**Hon. Terry Stratton:** Honourable senators, my question is addressed to the Leader of the Government in the Senate. It is a request for clarification of a question that I asked yesterday. I asked whether legal proceedings were being initiated against those persons who prepared the misleading financial statements for the Office of the Privacy Commissioner. The leader stated:

I can tell the honourable senator that there may be as many as 12 investigations ongoing by the RCMP.

Will the leader confirm that those 12 RCMP investigations all relate to the Office of the Privacy Commissioner?

**Hon. Sharon Carstairs (Leader of the Government):** My understanding, honourable senators, is that those 12 investigations are all in regard to the issues raised by the Auditor General.

**Senator Stratton:** They are with respect to the Privacy Commissioner?

**Senator Carstairs:** That is what her report was about, so I would presume that that is what the 12 investigations are about.

#### PARLIAMENT

##### GUIDELINES ON SCREENING APPOINTMENTS OF OFFICERS

**Hon. A. Raynell Andreychuk:** I have a supplementary on the issue of the Privacy Commissioner. The Leader of the Government in the Senate stated, quite profoundly in my opinion, that we cannot have this kind of situation occur again; that there should be mechanisms in place, and that we should be part of ensuring that those mechanisms are in place.

Mr. Radwanski's appointment came about on the recommendation of the Prime Minister and was passed by the House of Commons and the Senate. I was somewhat troubled that, in the newspapers, the Prime Minister has defended his decision by saying that it was really the opposition parties and the Senate that approved Mr. Radwanski's appointment.

I was one of those who voted for Mr. Radwanski's appointment. I voted on the basis that I had received his curriculum vitae and that he came here and talked about not wasting money and about doing things in an efficient way. The fact that he had Liberal connections set off certain bells and whistles in this place, but I thought that if he had merit to have the job, those connections were no reason to exclude him. In other words, I think we have acknowledged a certain understanding of patronage in this place. The fact is that the Prime Minister may know more Liberals and competent Liberals. My emphasis was on competence.

The Prime Minister is indicating that, somehow or other, we voted for him and that we are accountable for him, and I agree that we are, as a bottom line. Therefore, would the Leader of the Government in this place support a motion to put in place a job description and some guidelines on how we should deal with the appointment of Officers to Parliament?

In the past, we have relied heavily on the Prime Minister's recommendation. It would appear that that method has failed us. Would it be appropriate to put in place stronger policies and practices, at least for this chamber, in appointing future Officers of Parliament?

**Hon. Sharon Carstairs (Leader of the Government):** The honourable senator raises a very interesting point. I may be wrong but I understand that these Officers of Parliament are, in fact, prescribed by law. That is how they become Officers of Parliament. Within that, there is certainly a form of job description, if you will, as to what it is that we expect as they undertake and perform their duties.

I think it is also necessary to have a process, which I certainly supported last time around, to bring the individual before us and to ask vigorous questions. Perhaps our questions were not as vigorous as they might have been, in hindsight. However, I do not think any of us could possibly have foretold the sequence of events as laid out by the Auditor General.

Should we have a tougher screening process in this chamber for those who will be Officers of Parliament? That is a legitimate question. It is a legitimate topic for discussion with our Rules Committee, which will shortly be dealing with the issue of the ethics counsellor, who will also be an officer of this place. What exactly would we expect from such an individual?

**Senator Andreychuk:** I have a supplementary question. I am glad the leader has raised the ethics officer issue because we have had great discussion that there should be some guidelines.

• (1420)

Honourable senators, in the past, we have relied heavily on the Prime Minister's recommendation. Is it not now time for this chamber to start to assert itself? If this person is an employee of ours, in the sense that he is an officer of this place, then should we not move to a process in which we take more ownership in the appointment? As a result, we would be in the position of being more accountable when things go wrong, or at least we would have some alert measures in place on which to act.

**Senator Carstairs:** I think what the Prime Minister was saying clearly is that, yes, he does make the recommendation. He is not denying that he made the recommendation. However, once that recommendation is made, he is saying that it is up to the two chambers to decide whether his recommendation meets their needs, expectations and desires. That is why we held the process we did in this place. Interestingly enough, it was not done in the other place. I think that is a good thing.

Are there other issues that should have been raised? I think all of us will be much more vigilant. Are there things we want to carve in stone? I think that is up for consideration and may well become part of the rules of this place.

Hindsight is always 20/20, which is what we are now engaged in. We are looking at what I thought was a positive procedure that took place in this chamber. Unfortunately, I think we were badly let down.

#### OATH OF OFFICE—ORIENTATION OF OFFICERS

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, my supplementary flows from the question that has just been asked.

On page 37 of the report of the Auditor General are two matters to which I wish to refer. The Auditor General reports:

In addition, we were unable to find any evidence that an oath of office was administered to the former Commissioner.

Honourable senators, I am sure this point speaks directly to officers of Parliament who are approved by a resolution of this place. If the oath of office is to be administered to anyone, it would be our responsibility to ensure that it be administered to officers of Parliament.

The second part of my question also arises from the same page of the Auditor General's report, where it is pointed out that the former commissioner had been given little or no orientation to the public service culture beyond being given two information booklets. Is the government and the Privy Council in particular prepared to assume some responsibility for the process in this case?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, we come here to make laws. One of the reasons I have been conducting seminars for new senators is because I realized we were not doing much in the way of orientation for new senators.

I have distributed books to all senators on our side, and I have distributed those books to the leadership on the other side. It may not be perfect, but at least I do it. I do it because I believe it is absolutely essential.

This is a difficult situation, which I got into yesterday. These officers of Parliament stand somewhat above and apart from other public service employees. They are our officers.

**Senator Lynch-Staunton:** They come under the same guideline as deputy heads.



**Senator Carstairs:** We have responsibilities to them and we provide them with information, but how do we compel them to read that information? The Auditor General made reference to this? She does not indicate that the former commissioner was not given the information. According to her report, he did not seem to have followed what was included in that information.

[English]

Perhaps this issue is part of what Senator Andreychuk was addressing; that is, what is to be the relationship of an officer of Parliament with Parliament? Who do they see as their bosses? I hope the answer is the two chambers, but who exactly is the person or persons to whom these individuals respond?

That is why I suggested that perhaps we need to take a closer look at this issue, which is what the Standing Committee on Government Operations and Estimates of the House of Commons is doing.

[Translation]

ORDERS OF THE DAY

CRIMINAL CODE

BILL TO AMEND—MESSAGE FROM  
COMMONS—ORDER STANDS

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Robichaud, P.C.:

That, with respect to the House of Commons Message to the Senate dated September 29, 2003 regarding Bill C-10B:

- (i) the Senate do not insist on its amendment numbered 2;
- (ii) the Senate do not insist on its modified version of amendment numbered 3 to which the House of Commons disagreed;
- (iii) the Senate do not insist on its modified version of amendment numbered 4, but it do concur in the amendment made by the House of Commons to amendment numbered 4; and

That a Message be sent to the House of Commons to acquaint that House accordingly.

**The Hon. the Speaker:** Is the house ready for the question?

**Hon. Gérard-A. Beaudoin:** Honourable senators, I will speak to this item next Tuesday.

**The Hon. the Speaker:** Is the honourable senator asking that the item stand?

**Senator Beaudoin:** Yes, Your Honour.

[Translation]

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I am prepared to consent to the motion for adjournment of the debate, moved by Senator Beaudouin, who will address this issue on Tuesday of next week.

Order stands.

DELAYED ANSWERS TO ORAL QUESTIONS

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I have the honour to table a response to a question raised by Senator Forrestall on March 18, 2003, concerning the deployment of a platoon of the Canadian Forces to the United Arab Emirates and a response to a question raised by Senator Forrestall on June 16, 2003, concerning the involvement of Hercules aircraft crews in the war with Iraq.

NATIONAL DEFENCE

UNITED ARAB EMIRATES—  
DEPLOYMENT OF PLATOON

*(Response to question raised by Hon. J. Michael Forrestall on March 18, 2003)*

A security platoon of the Canadian Forces has been deployed to the Arabian Gulf region to provide security for CF personnel and assets working in support of Operation APOLLO, the Canadian military contribution to the international campaign against terrorism, and now in support of the Canadian contribution to ISAF in Kabul, Afghanistan.

WAR WITH IRAQ—  
INVOLVEMENT OF HERCULES AIRCRAFT CREWS

*(Response to question raised by Hon. J. Michael Forrestall on June 16, 2003)*

No Canadian Forces (CF) aircraft took part in the Iraq conflict and the information provided by the US military was confused with the CF's contribution of three Hercules transport planes to the international campaign against terrorism and missions in Afghanistan.

[English]

## PUBLIC SERVICE MODERNIZATION BILL

### THIRD READING—MOTION IN AMENDMENT—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Harb, for the third reading of Bill C-25, to modernize employment and labour relations in the public service and to amend the Financial Administration Act and the Canadian Centre for Management Development Act and to make consequential amendments to other Acts,

And on the motion in amendment of the Honourable Senator Beaudoin, seconded by the Honourable Senator Comeau, that the Bill be not now read a third time but that it be amended in clause 12, on page 126, by replacing lines 8 to 12 with the following:

**"30.** (1) Appointments by the Commission to or from within the public service shall be free from political influence and shall be made on the basis of merit by competition or by such other process of personnel selection designed to establish the relative merit of candidates as the Commission considers is in the best interests of the public service.

(1.1) Despite subsection (1), an appointment may be made on the basis of individual merit in the circumstances prescribed by the regulations of the Commission.

(2) An appointment is made on the basis of individual".

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I rise to participate in the debate on the amendment to Bill C-25 brought forward by my colleague Senator Beaudoin. I listened carefully to the arguments made by the proponent of the amendment, as well as to those made by the opponent of the amendment. On balance, I find myself coming down in favour of the argument advanced by the proponent of the amendment.

Honourable senators, during the committee hearings on Bill C-25, in which I participated, it became clear that the government, quite frankly, is going down the wrong path when it comes to replacing relative merit with individual merit. I think events of recent days speak to the dangerous approach that is captured by Bill C-25.

Beyond simply reinstating the use of relative merit, there is a further issue that needs to be addressed. That is one of strengthening and reinforcing employment equity in the Public Service of Canada. I was pleased that in some of the exchanges in the debate in the last day or two the issue of employment equity was addressed by honourable senators.

The primary intent of employment equity is to ensure that the workforce reflects the community. It is a remedial concept, designed to overcome and correct historical employment disadvantages faced by identified target groups — to date, women, visible minorities, persons with disabilities and Aboriginal peoples.

In outlining its goal, the Employment Equity Act states:

...to achieve equality in the workplace so that no person shall be denied employment opportunities or benefits for reasons unrelated to ability and, in the fulfilment of that goal, to correct the conditions of disadvantage in employment experienced by women, aboriginal peoples, persons with disabilities and members of visible minorities by giving effect to the principle that employment equity means more than treating persons in the same way but also requires special measures and the accommodation of differences.

• (1430)

Honourable senators, unfortunately women are under-represented in the upper ranks of management in the Public Service of Canada. First Nations peoples, persons with disabilities and visible minorities are under-represented in the public service at all levels, not only at the upper levels. For example, in spite of recent progress, while women represent more than half of the public service, they represent less than a third of those serving in the executive ranks. Women are still widely employed in supporting roles, often with no security, in term positions. Indeed, six out of every ten women hired into the Public Service of Canada enter as term employees.

Visible minorities represent 10.3 per cent of the potential workforce across Canada, but as of March of last year, only 6.8 per cent of the federal public service and only 3.8 per cent of the executive category in the public service.

In the year 2001-02, while 1,738 persons from the visible minority community were hired into the federal public service, two-thirds of these were for insecure term positions. First Nations peoples represent 2.1 per cent of the potential workforce but only 1.6 per cent of the federal public service. As was the case with visible minorities, of the 785 Aboriginal Canadians hired in the year 2001-02, two-thirds were not for term positions, not for permanent positions but, rather, for insecure term positions.

In 2002, the Treasury Board Secretariat commissioned a survey of public service employees. That survey, done by the Treasury Board itself, revealed that 26 per cent of racially visible public service workers indicated that they experienced harassment on the job in the past two years and that 34 per cent had experienced discrimination in the last three years. Some 30 per cent of Aboriginal public servants said that they had experienced harassment and 28 per cent alleged that they had experienced discrimination.



In the matter of career development, we find that 44 per cent of racially visible workers and 41 per cent of Aboriginal workers felt that their federal public service supervisors did not do a good job of helping them develop their careers. Further, 28 per cent of visible minority workers and 17 per cent of Aboriginal workers believed that the discrimination they experienced had adversely affected their career progress in our public service.

Honourable senators, three years ago, the Task Force on the Participation of Visible Minorities in the Federal Public Service, in its report entitled "Embracing Change in the Federal Public Service" recommended that the government set a benchmark of ensuring that, by the year 2002-03, one out of every five external hires would be from the visible minority community. The federal government endorsed that recommendation. The question now is: How are we doing? Last year it was one in 10, a long way indeed from one in five. Not one out of 68 departments of the federal government met the goal of one in five.

Honourable senators, this bill, as crafted, will not help the government meet its objectives. It will do the opposite, I suggest. It will lead to chaos in the implementation of employment equity; it will blur the lines of accountability required to ensure that it is a priority.

As demonstrated by the Public Service Staff Employee Survey results, to which I referred a minute ago, visible minorities workers have not found their supervisors or their departments to be supportive of their career development. The Treasury Board itself recognizes that there are problems at the lower management levels in making employment equity not just a theoretical objective or a goal but an obligatory reality.

In particular, it is noted in the Treasury Board's 2001-02 annual report on employment equity in the public service:

Nevertheless, a central challenge remains: while there appears to be commitment among deputy ministers and assistant deputy ministers to the hiring of visible minorities, the message that there is an obligation to make special efforts to identify, hire, mentor, and promote visible minority employees is not being effectively conveyed to managers at lower levels. Work still needs to be done to convince hiring managers that increasing the representation and participation of visible minorities makes good business sense.

Honourable senators, Bill C-25 allows the government to delegate hiring authority down to lower level managers. They may or may not believe in the merits of a representative workforce. They may or may not be willing to assist the career development of disadvantaged workers. They may or may not want to hold open competitions and, if they so wish, can invent qualifications for a particular position that will disqualify almost all but the candidate they favour. That is what we are doing, in part, in Bill C-25.

The ability to appeal any decision on the basis of human rights or on the basis of merit will be severely restricted. If a competition has been twisted so that only one person, the one they want, meets

the qualifications, there is no appeal, no recourse. There is no mechanism in this bill to ensure that employment equity initiatives are given a priority in this new staffing protocol. Managers are not committed to employment equity initiatives and will not be held accountable under this new legislation except in the most narrow of circumstances.

Honourable senators, it is essential that the merit principle be applied in a barrier-free manner for visible minority communities — Aboriginal people, women and persons with disabilities.

The Treasury Board itself says on its Web site:

In a society that prides itself as a mosaic, diversity must give Canadian institutions a universal competitive edge in the global market. Diversity is an advantage only when it is valued and nurtured, not when it is merely accommodated. The legislative obligation under the Employment Equity Act is the foundation on which to build diversity. In turn, inclusiveness is what turns diversity into an advantage.

#### MOTION IN SUBAMENDMENT

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I support the amendment of my honourable colleague Senator Beaudoin. Nevertheless, in my view, it needs to be strengthened. Therefore, I move, seconded by Senator Stratton:

That the motion in amendment be amended:

(a) by replacing the words "by replacing lines 8 to 12" with the following:

"(a) by replacing lines 8 to 11"; and

(b) by replacing the words "(2) An appointment is made on the basis of individual" with the following:

"(b) by replacing lines 26 to 29, with the following:

"may be identified by the deputy head,

(iii) any current or future needs of the organization that may be identified by the deputy head, and

(iv) achieving equality in the workplace to correct the conditions of disadvantage in employment experienced by persons belonging to a designated group within the meaning of section 3 of the *Employment Equity Act*, so that the employer's workforce reflects their representation in the Canadian workforce."

• (1440)

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion in subamendment?

**Hon. Joseph A. Day:** Honourable senators, although I do not have a copy of the proposed subamendment in my hand, I did follow the wording and I thank the honourable senator for reading it.

**The Hon. the Speaker:** Honourable senators, copies of the subamendment will be distributed as soon as possible:

**Senator Day:** I believe that I have caught all of the nuances of this subamendment and that I may be of assistance to honourable senators in assessing the need, or otherwise, for it.

First, honourable senators, it is an awfully tempting procedure to put our concerns — linguistic, employment equity or others — in another piece of legislation that is so all encompassing from the point of view of human resources as the one we have before us. However, that procedure is neither desirable nor necessary because the law exists and the law, in this case the Employment Equity Act, applies. I will shortly point out to honourable senators a number of things that have to be done under the Employment Equity Act.

We do not need to repeat another law in Bill C-25. To do so would put in jeopardy other laws where the Employment Equity Act is not repeated. If it is repeated in some laws and not in others, then judges may say that there is intent by the legislators to have it apply in certain areas and not in other areas. That is why it is not desirable to repeat a law that already exists, unless it is necessary for a specific reason.

Honourable senators, I will quote from Bill C-25, page 113, clause 12, line 15 in respect of the Public Service Employment Act:

Canada will also continue to gain from a public service that strives for excellence, that is representative of Canada's diversity and that is able to serve the public...

The public service is representative of Canada's diversity.

I will now quote from page 126 in respect of merit:

30. (2) An appointment is made on the basis of merit when —

— and the clause continues —

(b) the Commission has regard to...

(ii) any current or future operational requirements of the organization that may be identified by the deputy head, and

(iii) any current or future needs of the organization that may be identified by the deputy head.

Needs would be determined by operational needs or by the requirement to meet other laws.

"Other laws" includes the Employment Equity Act, which states:

5. Every employer shall implement equity by

(a) identifying and eliminating employment barriers against persons in designated groups that result from the employer's employment systems, policies and practices...

(b) instituting such positive policies and practices and making such reasonable accommodations as will ensure that persons in designated groups achieve a degree of representation in each occupational group in the employer's workforce that reflects their representation...

That representation includes Aboriginal people, persons with disabilities, visible minorities and women.

Honourable senators, there is plenty of provision within existing laws, and the Public Service Commission, under this proposed legislation, would be given a greater focus on ensuring that the roles of deputy heads and delegated authorities are properly administered, that there is no abuse of process and that they are doing what they are supposed to be doing under the Employment Equity Act and under other statutes.

With amendments that purport to micromanage, we are taking away the basic theory of the proposed legislation in that we want managers to manage and to be accountable for their management practices and to follow the other laws.

Senator Kinsella points out that objectives have not been achieved, and he is correct. However, when I ask honourable senators to vote in favour of Bill C-25, I am suggesting that this will allow the Public Service Commission and the deputy heads to achieve those goals. If the goals are not being achieved, we will call them to task. They cannot say, "Well, we are following court procedures and cannot do certain things because of those procedures."

The subamendment that the Honourable Senator Kinsella has proposed is not desirable, and I respectfully request that honourable senators vote against it.

**Senator Kinsella:** Would Senator Day take a question for clarification?

**Senator Day:** Yes.

**Senator Kinsella:** In an ideal world, I suppose that I would agree with the thesis advanced by the honourable senator that, yes, we have an Employment Equity Act that should take care of matters, and we have the Human Rights Act to take care of non-discrimination issues.



• (1450)

Within the environment in which we are living these days — when a deputy head is so much in the news, and an Auditor General writes such a scathing report of what happened in the Office of the Privacy Commissioner — and given that the deputy head acted in the way in which the Auditor General has said in her report that he acted — should honourable senators not be concerned that we have a responsibility to make the appointment process of the public service a lot tighter?

In making it much tighter, if you accept that proposition, we must ensure that the appointment process is totally transparent; and that the delegation that has been made to deputy heads in the past for hiring for the public service will be followed. I understand the argument: The theory is to allow managers to manage, but here we have examples where managers have been doing anything but managing properly. Given the reality of the experience and the knowledge that we have of recent events, why would we not want to have, in this particular area of advancing employment equity in the public service, a specific statutory requirement of what the deputy head should do?

**Senator Day:** The entire theory of the act that we are discussing, Bill C-25, is to avoid and to get away from what has happened in the past. What is happening now under the current law, and what we are reviewing in the newspapers every day, is a result of the existing law, not the result of this proposed change.

What we are trying to achieve here is not to be prescriptive — not to be telling the deputy heads that they must do this, this and this, not to set up a series of rules — and to get away from what the Auditor General has described as a public service that is broken, that is not working; the staffing system is not working.

To answer my honourable friend's question, I believe such a provision would go contrary to the entire theory and theme of this legislation. We discussed this point at committee. It goes entirely contrary to the attempt to have the managers understand — of course, they must understand all of the laws — but to have them be made responsible for the implementation of those laws, and to manage. The more prescriptions you put in there, and the more things you tell them to do, the more they become mere mechanics at trying to fit this, this and this, like round pegs into round holes, instead of being general managers as we would like them to be.

**Senator Kinsella:** The honourable senator made reference to our discussion in committee on this matter. Would he like to review for honourable senators the position of the Canadian Union of Public Employees on this very point? My understanding of what they were saying is that this is precisely why the entire bill is unsatisfactory to them — and not only the Canadian Union of Public Employees, but PIPS and other witnesses as well. Does the honourable senator not at least agree that there was a division of views on this point from the witnesses?

**Senator Day:** Honourable senators will appreciate that we heard from about 25 different witnesses, and not every witness agreed on every point. Honourable senators were charged with the responsibility of considering all of the evidence, and balancing it. The members of the committee, after having done so, decided to proceed without amending Bill C-25.

[Translation]

**Hon. Jean-Robert Gauthier:** Section 3 of the Employment Equity Act lists the designated groups. The Honourable Senator Day was asked yesterday if he had this list, and the honourable senator then offered to get it for us. Is Senator Day able to provide us with this list of designated groups today?

**Senator Day:** Yes, honourable senators. The document is, however, in English. For this reason, I will read it in English.

[English]

“Designated group” means women, Aboriginal peoples, persons with disabilities and members of visible minorities.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Senator Day, are you satisfied that this bill requires that in any appointment process, the designated groups must be considered?

**Senator Day:** Yes. I am satisfied that the deputy heads must be cognizant of all the laws that exist; that the designated groups under the Employment Equity Act, and the Employment Equity Act, in general, must be considered.

**Senator Lynch-Staunton:** Then why is that not specified in Part 3, proposed section 34 (1), to which you attracted my attention yesterday? If my interpretation is correct, it is discretionary, and I will read it to you:

For purposes of eligibility in any appointment process other than an incumbent-based process, the Commission may determine an area of selection by establishing... as a criterion, belonging to any of the designated groups within the meaning of section 3 of the *Employment Equity Act*.

That is discretionary not compulsory. If my interpretation is correct, designated groups are at the mercy of any appointment process.

**Senator Day:** Thank you, honourable senator. My understanding is that the law must be considered, and proposed sections 34 (1) and (2) is enabling legislation. For the purposes of eligibility in the appointment process, they may consider and do certain other things. Likewise with respect to (2), the commission may establish different geographic areas for the designated groups, which would be different from the geographic area for other employees. That is the flexibility that is given to the manager in order to achieve the manager's obligations under the Employment Equity Act.

**Senator Lynch-Staunton:** In reply to my first question —

**The Hon. the Speaker:** Before going on, I must advise honourable senators that Senator Day's 15 minutes have expired.

**Senator Day:** I think, Your Honour, that it is important for honourable senators to understand this complex piece of legislation. I am prepared to attempt to continue to answer the questions on this point.

**The Hon. the Speaker:** Are you asking for leave to continue?

**Senator Day:** Yes.

**The Hon. the Speaker:** Is it agreed?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** It is agreed.

**Senator Lynch-Staunton:** In answer to my first question, the honourable senator suggested — if not affirmed — that it was an obligation for any appointment process to have within it the designated group consideration. He is now saying that the deputy heads, or whoever, need the latitude. It is either one or the other. I think needing the latitude is what proposed section 34 (1) says, which therefore does not put designated groups in the position that they should be in when it comes to the appointment process.

In other words, why is it not compulsory for designated groups to be considered in any appointment process? Why should it be left to the discretion of the person responsible for that process?

**Senator LeBreton:** Maybe we will have another Radwanski.

**Senator Day:** As I understand the Employment Equity Act, the designated head — the deputy minister or the employer — must consider those obligations that it has under the Employment Equity Act. The manner in which those obligations are considered, and whether they need some tool to achieve their obligations, is what section 34 is giving them; it provides the tools to meet their obligations under the Employment Equity Act.

**Senator Lynch-Staunton:** It is giving them the tools, which they may or may not use.

**Senator Day:** That is correct. They may not have to use them.

**Senator Lynch-Staunton:** That is it, exactly. Therefore, your original affirmation that designated groups will always be considered was slightly exaggerated, to say the least.

**Hon. Terry Stratton:** I would like to move the adjournment of the debate in the name of Senator Oliver.

On motion of Senator Stratton, for Senator Oliver, debate adjourned.

## LEGAL AND CONSTITUTIONAL AFFAIRS

MOTION TO AUTHORIZE COMMITTEE  
TO STUDY INCLUDING IN LEGISLATION  
NON-DEROGATION CLAUSES RELATING TO  
ABORIGINAL TREATY RIGHTS—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Robichaud, P.C.:

That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report on the implications of including, in legislation, non-derogation clauses relating to existing aboriginal and treaty rights of the aboriginal peoples of Canada under s.35 of the *Constitution Act, 1982*; and

That the Committee present its report no later than December 31, 2003.

• (1500)

**The Hon. the Speaker:** Is the house ready for the question?

**An Hon. Senator:** Question!

**The Hon. the Speaker:** Does no one wish to speak? Senator Stratton, would you like to speak?

**Senator Stratton:** I would like to adjourn the debate, if I may.

**The Hon. the Speaker:** I believe we can stand it. If not, then there is a way to proceed. Senator Stratton wants to move the adjournment of the debate. I will put that motion and then we can deal with it.

It is moved by the Honourable Senator Stratton, seconded by the Honourable Senator LeBreton, that further debate be adjourned to the next sitting of the Senate. Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** I will put the question in a formal way for purposes of certainty.

All those in favour of the motion will please say “yea.”

**Some Hon. Senators:** Yea.

**The Hon. the Speaker:** All those opposed to the motion will please say “nay.”

**Some Hon. Senators:** Nay.

**The Hon. the Speaker:** I believe the “yeas” have it. No senators rising, the motion is passed.

On motion of Senator Stratton, debate adjourned.

## PERSONAL WATERCRAFT BILL

THIRD READING—DEBATE ADJOURNED

**Hon. Tommy Banks** moved the third reading of Bill S-10, concerning personal watercraft in navigable waters.—*(Honourable Senator Banks).*

He said: Honourable senators, I defer to Senator Spivak.



**Hon. Mira Spivak:** Honourable senators, for some two and a half years, the personal watercraft bill has been widely distributed and debated across the country.

This bill has been the topic of call-in radio shows, newspaper columns, magazine articles and petitions. Here in the Senate, two committees have examined the bill. Witnesses from all regions have appeared before our Standing Senate Committee on Energy, the Environment and Natural Resources in support of this bill.

After hearing from them and from the bill's smaller, yet well-organized, cadre of opponents, committee members gave their endorsement. The vote was unanimous.

In all that time, no one has suggested any way to improve this bill. No one has proposed amendments, either informally or in formal presentations to your committees.

Given the long passage of time since its introduction in May 2001, and given the support for it in the country, I sincerely hope that honourable senators will see fit to send it without further delay to the other place.

If this were a government bill, it could only be described as a housekeeping measure because Bill S-10 puts in place a process that the Canadian Coast Guard itself advanced in 1994 to deal with the various problems of personal watercraft, also known as Jet Skis or Sea-Doos. The government, for a time, also considered taking this step, and it appeared as a regulation in the *Canada Gazette*, but then, at the urging of manufacturers, it was put in abeyance.

This bill recognizes that now is the time to fill the gap, to do what other countries have done, to acknowledge that Jet Skis are not the same as other small boats that people use to go fishing or visit neighbours at the cottage. They are not the same either in their design or in how people use them, and they require specific regulation.

No one, for example, would think of putting a 215-horsepower engine on the back of a 12-foot runabout and going out on a lake to make it airborne by jumping the wakes of other boats. Makers of personal watercraft are putting that kind of horsepower into what they describe as their "musclecraft," and promoting them for the adrenalin rush that they give drivers who perform those kinds of stunts.

Other countries have set special rules for Jet Skis. Switzerland has banned them entirely. Australia has banned them from parts of Sydney Harbour and, elsewhere, prohibits drivers from doing stunts within 200 metres of shore.

In the United States, where states set boating laws, all have some restrictions specific to personal watercraft, and 38 of the states prohibit them in certain areas.

Canada has only set a minimum age of 16 for PWC drivers and requires owners, but not renters, to pass a written test on the rules of the water. Even those modest restrictions are really not well-enforced.

Bill S-10 is consistent with the Canadian approach to regulating what happens on our lakes and rivers. It recognizes that, constitutionally, the federal government has sole jurisdiction over matters of navigation, and only the Minister of Fisheries and Oceans can set limits. It allows local communities to have input into setting those limits, just as they now have input into restricting water-skiing where it is too dangerous, or boating regattas on quiet lakes. It allows local knowledge of waterways and the local choice of cottage owners to be factors in setting limits. It allows municipal officials and local law enforcement officers to be part of the process. It allows those people to have a say in deciding where personal watercraft can be safely used, and where they are a safety risk or a threat to the environment.

About ten years ago, manufacturers made the argument to government that PWCs are just like other boats and should not be subject to special regulation, but we now know that that is just not true. Committee members heard testimony from witnesses who spoke to the design of PWCs and their unique noise characteristics. One witness explained how Jet Skis, without a rudder or propeller or anything else to create drag to help steer the boat, are out of control unless water is flowing through the jet pump. Off-throttle or off-power, drivers have no ability to steer them. It is not surprising that the U.S. Coast Guard statistics show that PWCs are involved in 42 per cent of collisions, although they account for less than 10 per cent of registered recreational boats.

Committee members saw the statistics from Health Canada's Canadian Hospitals Injury Reporting and Prevention Program, and these statistics show that emergency rooms in Canada are seeing a disproportionate number of injuries caused by PWC accidents.

Committee members repeatedly asked for more Canadian data, and just two weeks ago, it arrived. The Lifesaving Society in its 2003 National Boating Fatalities Report documented a 53 per cent increase in PWC deaths — 53 per cent between 1996 and 2000. In the same period, deaths among people using other small boats declined 29 per cent.

The number of deaths is small, fortunately, but the ratio of deaths caused by PWCs is dramatic: 11 deaths per 100,000 vessels, compared to 6 deaths for other powerboats. They are just not as safe. Even the Coast Guard acknowledged as much last summer when it issued a warning to PWC drivers not to take children under the age of six on board as passengers. The reason was that a child in British Columbia was tragically killed while riding with her father.

• (1510)

Even without these latest statistics, our committee members recognized the unique dangers of PWCs. To quote the chairman, Senator Banks: "The evidence we heard, statistically, anecdotally and otherwise, is that they are flat out dangerous by comparison with a putt-putt."

With respect to the environment, there are issues of engine emissions polluting the water, threats to loons and other nesting birds on shore that PWCs can and do approach more easily than other boats. There are issues of PWC use in salmon spawning grounds and near marine mammals.

An eco-tour operator on the edge of Algonquin Park, Mr. Todd Lucier, made an eloquent appeal for the passage of this bill. His business attracts Canadians and a great many foreign visitors to experience the peace, the wildlife and the natural environment that Canada promotes throughout the world. Just one or two Jet Skis on the lake can shatter that experience.

Mr. Lucier referred to the mission of the Canadian Tourism Commission — "to offer people an opportunity to connect with nature and to experience diverse cultures and communities," and its vision "to provide world-class natural and leisure experiences...while preserving Canada's clean, safe, natural environments."

This is what visitors to Canada expect of a wilderness experience. They are not surprised to see people fishing from small boats. They are very surprised to see that our lakes are treated like theme parks for thrill-seekers on Jet Skis.

Through this bill, Mr. Lucier asked us to help ensure that the tourism commission can deliver on its promise. He asked us to help protect his million-dollar investment and the investments of other eco-tour operators. Other tourism operators have written, reporting the comments of visitors who say they will not be returning to Canada because of the disturbance of Jet Skis. They will go to areas in the United States where thrill crafts are banned. This is a housekeeping bill, with important economic implications for Canada's tourism industry.

Certainly, PWC manufacturers fear an adverse impact on their industry. They have organized opposition to this bill through dealerships where Jet Skis are sold and through boating groups that they dominate.

Interestingly enough, though, in some two and one-half years, we have heard from only a handful of Jet Ski owners who oppose this bill. Cottage associations, whose members also own PWCs, are strongly behind the bill. Why is that? Perhaps it is because this bill would not automatically ban Jet Skis everywhere, or anywhere for that matter. It would allow communities to choose from a whole range of options. It would allow a ban where it is absolutely needed for safety. It would allow dedicated hours of use, as the Coast Guard proposed in 1994. It would give Jet Ski drivers their hours of fun and ensure that they share the waters to give swimmers, canoeists, windsurfers and others their time — time free of the fear of being run over or swamped by an out-of-control Jet Ski. It would allow prohibitions of such stunts as wake-jumping and driving in circles to let cottage owners who use PWCs like any other boat — for transportation — to keep using them. It is a rational approach based on local knowledge, local choice and local control.

The unfettered free-for-all on our waters that manufacturers have succeeded in gaining for some 15 years may in fact have hurt their business. By opposing any reasonable restriction on PWCs, they have made them the pariahs of cottage country. New sales have declined dramatically, we are told. Who wants to buy one when they have become symbols of aggressive, inconsiderate behaviour, of wanting to muscle out the more peaceful activities of neighbours? Some do obviously. I respectfully submit, however, that manufacturers would have been better advised to support regulations that sort out where PWCs can be used safely and with consideration for others, and where they pose too many problems.

There are thousands of places where thrill-seekers could have fun, such as 200 metres offshore in large bodies of water, or in the wide-open spaces of the St. Lawrence River, for example. Quiet bays and small lakes across this country, however, should not be treated as theme parks.

There are two other points I would like to raise. First, since 1994, when the government formed its policy to disallow local PWC restrictions, cottagers, homeowners on the water, municipalities and some provinces have had enough. Without a federal law they can use to impose restrictions, they have gone ahead and imposed them anyway, likely in violation of the constitutional division of powers.

In British Columbia, the District of Saanich has banned PWCs from Prospect Lake. In Whistler, the municipality is moving toward the same solution. In Ontario, cottage communities have quietly imposed their own bans. In Quebec, the government gave municipalities the right to set shoreline restrictions and contemplated bans of all powerboats on small lakes. In New Brunswick, a few years ago the government banned all small boats with engines larger than 10 horsepower from some 30 watersheds.



**Senator Kinsella:** Good decision.

**Senator Spivak:** Where is the freedom to navigate that boating groups who oppose the bill jealously protect? Where is the respect for the federal government's exclusive authority to protect that right? An official of that province said the federal government has not challenged New Brunswick's law. As for the freedom to navigate, if you want to navigate by paddle power or sail power, go right ahead. That is what he said.

Honourable senators, the gap this bill seeks to fill has created a situation — a situation in which other jurisdictions are usurping federal authority out of sheer frustration, and the government is not defending it. This bill would defend that authority — the federal government authority — by creating a process that local authorities could use to protect the safety and environment of their waterways and respect the Constitution. It would restore clarity, reason and federal authority to the process of limiting unsafe use of our water.

Honourable senators, the final point is something that may have been brought to your attention by opponents of this bill. They claim that it eliminates ministerial discretion — that is, the right of the minister to say yes or no when he receives a request from a local authority to restrict PWCs for safety or environmental reasons.

In fact, the bill does not eliminate that discretion. It gives the minister the authority to do a host of things in any way the minister chooses. He or she can determine the type of restrictions that are allowable, the degree of consultation required, and such practical matters as the posting of signs. Most important, it allows the minister to say "no" if navigation "would be obstructed, impeded or rendered more difficult or dangerous."

There is a proviso on that "no," however. The minister must keep a record of local requests and the reasons for rejecting any of them, and he must file annual reports to Parliament. Various clauses that indicate the minister "shall" are there as a safeguard. They ensure that local requests are put through the process to a conclusion, not simply put in abeyance as they were in 1994.

Honourable senators, this is a housekeeping bill with some important implications for safety on our waterways, for environmental protection and for restoring, in practice, the federal authority over navigation enshrined in our Constitution. It is supported by 78 associations, representing property owners, canoeists, wildlife advocates and others. As well, there are thousands of signatures on petitions and many individual letters and e-mails saying why this bill is needed.

Therefore, I hope all honourable senators will consider it favourably.

**Hon. Bill Rompkey:** Honourable senators, I have a question, but I want to first congratulate Senator Spivak on bringing this bill forward because it addresses a very important issue.

I listened carefully to what was said. Having had some experience on the receiving end of PWCs — if I can put it that way — I share her views and her concerns. They have a very short turning circle in small lakes. A swimmer in a lake is aware of the watercraft, but the watercraft is not always aware of the swimmer. Apart from deteriorating shorelines, et cetera, there is a great danger. These PWCs are being driven at faster and faster speeds all the time.

Therefore, I support the legislation. I can see some advantage to having a federal presence, a federal licence and so on. What concerns me, out of experience, too, is enforcement. Could Senator Spivak comment on that? I know that cottager associations are supportive of this proposed legislation. If the honourable senator would like, I could perhaps get some more support from cottage owners' associations in this area.

• (1520)

I believe the problem is enforcement. The federal government will not, I do not think, enforce these matters on lakes. The provincial government does not have the capacity or the people. The cottage owners do not have the resources to employ enforcement officers.

While I support the legislation, and it is an important piece of legislation, and I can see the value of having it put under the federal aegis, I wonder if the honourable senator would like to comment on the difficulties of enforcement.

**Senator Spivak:** First, I must correct an impression. It is not I who am putting this bill under the federal aegis. All navigation on our lakes and rivers falls under federal jurisdiction.

As far as enforcement is concerned, this bill does not deal with that question. There are six schedules under which 2,000 lakes have implemented restrictions. Those restrictions are already there. These restrictions cover subjects such as horsepower, how far one may go from the banks, speed, et cetera. I do not know how one would solve the problem.

I will say that in places where they have put up signs, such as in Saanich where they say, "No Sea-Doos," people just observe them. The lake next door allows Sea-Doos, but that is a larger lake. That is fine, too. This is a matter of conventional uses. When people are used to the rules, they may follow them. I am not able to definitively answer about the subject of enforcement. I am aware of the problem but this bill does not address it, and I do not know how it could.

On motion of Senator Moore, debate adjourned.

## CRIMINAL CODE

BILL TO AMEND—SECOND READING—  
DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Lapointe, seconded by the Honourable Senator Gauthier, for the second reading of Bill S-18, An Act to amend the Criminal Code (lottery schemes).—(*Honourable Senator Stratton*).

**Hon. Terry Stratton:** Honourable senators, I rise to speak today to Bill S-18, which proposes an amendment to the Criminal Code that would limit the locations at which video lottery terminals and slot machines could be installed to race tracks and other premises dedicated to gaming that are managed by the provincial governments.

The provinces currently have an exemption under the Criminal Code that allows these machines to be managed in other non-gaming locations such as bars and restaurants. Senator Lapointe, in introducing this bill, said that because these machines are both easily visible and accessible, they constitute a serious problem in this country. That may be the case. However, I suggest that we need to look very carefully at whether or not this particular legislation is needed in order to reduce the number of people in this country who are affected by a gambling compulsion, and to help those already addicted.

Gambling has, regrettably, ruined many lives. Problem gamblers hurt not only themselves through their addiction but also their friends and families. We must remember, however, that slot machines themselves do not determine whether or not a person chooses to gamble in the first place. The notion of individual responsibility must play an important part in any consideration of this issue. One could argue that alcohol and tobacco are quite visible in our society, yet not everyone who has access to these substances becomes addicted to them, or even uses them at all.

The same argument could just as well be made for slot machines or video lottery terminals. If they are available for a person's use in a restaurant or a racetrack, does that mean the person will use them? Does that mean a person will become addicted to them?

There are other questions we should ask ourselves when looking at this bill, especially with regard to jurisdiction. Should the federal government enact more laws to further restrict where provincial governments can manage these machines? In his remarks on April 30 of this year, Senator Lapointe said that this proposed Criminal Code amendment is not within provincial jurisdiction and that he does not care if the provinces agree or not. It is true that this amendment is within federal jurisdiction, but the provinces would be greatly affected by a unilateral decision taken on this matter.

In 2002, lotteries, video lottery terminals and casinos, all run by provincial governments, did \$11.3 billion-worth of business, \$6 billion of which was profit. It is fair to say that they will want to have a say in any changes that Parliament proposes.

Instead of enacting federal laws to further restrict where these machines can be located, we may be able to make progress in this area by enforcing the regulations that are already in place. The provinces already limit where these machines are located within the existing parameters. For example, video lottery terminals in Alberta are only allowed in age-restricted liquor-licensed venues. The provinces also restrict who can use these machines and the use of credit, cheques and ATM cards in their operation. The Manitoba Gaming Commission, for example, has the power to fine video lottery terminal sites a minimum of two weeks' revenue for regulatory breaches. They may confiscate machines for further infractions.

Are the provinces not fully monitoring gambling sites? Do the fines need to be raised? It may be worthwhile to look at these questions with respect to how to deal with problem gambling.

The motive behind the introduction of this bill is an honourable one, but simply passing more legislation may not accomplish what it intends to do. Honourable senators, an addict will seek out his or her drug of choice regardless of how difficult it is to access, be it drugs or alcohol. If video lottery terminals were removed from bars and restaurants and placed in racetracks and casinos, problem gamblers would still find a way to engage in this activity.

It is not uncommon for addicts to substitute one habit for another. Internet gambling, for example, allows people to place bets without leaving their homes. In 2002, it is estimated that Internet gambling was a \$10 to \$20 billion industry worldwide, and is still growing. With all of the avenues that gamblers have before them, we need to look much more seriously at treating the compulsion and educating the public in a substantive way against the possible outcomes of an addiction to gambling.

I share Senator Nolin's concern that with this amendment the state would be relieving itself of its responsibility and falsely believing that the problem has been dealt with when it really has not.

In a sermon given in 1522, Martin Luther spoke words that I think have a particular application to our consideration of this bill. He said:

Do not suppose that abuses are eliminated by destroying the object which is abused. Men can go wrong with wine and women. Shall we prohibit and abolish women? The sun, moon, and stars have been worshipped. Shall we pluck them out of the sky?"

On motion of Senator Milne, debate adjourned.



• (1530)

BILL TO AMEND—SECOND READING—  
DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Joyal, P.C., seconded by the Honourable Senator Mahovlich, for the second reading of Bill C-250, to amend the Criminal Code (hate propaganda).—(*Honourable Senator Stratton*).

**Hon. Terry Stratton:** Honourable senators, I am pleased to speak to the second reading of Bill C-250, to amend the Criminal Code, which proposes to extend the application of hate propaganda provisions to groups distinguished by sexual orientation.

This stage, as honourable senators know, is the stage that deals with the principle of the bill. I ask senators to consider whether this bill is indeed necessary or whether our current laws extend protection to those who may be subjected to the promotion of hatred based on their sexual orientation.

I will put it on the record: I reject hatred and hate propaganda being directed to any group. Hatred and violence against homosexuals is entirely unacceptable in Canadian society.

However, we should look at the Criminal Code as it is currently worded. Section 318(4), which this bill amends, states:

In this section, "identifiable group" means any section of the public distinguished by colour, race, religion or ethnic origin.

This section of the Criminal Code deals with genocide and the promoting of genocide against any identifiable group.

There are certain sections of the Criminal Code that deal with murder. There are sections of the Criminal Code that deal with assault. There are sections of the Criminal Code that direct the courts to take into consideration if a sentence should be increased or reduced to account for crimes based on someone's sexual orientation. Section 718.2 of the Criminal Code reads:

A court that imposes a sentence shall also take into consideration the following principles:

- (a) a sentence should be increased or reduced to account for any relevant aggregating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,
- (i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation or any other similar factor...

In effect, there is provision for consideration in sentencing for any crime that has been motivated because of someone's sexual orientation.

There is a concern that this bill will impact on the freedom of religion and freedom of expression in Canada. The bill was amended in the other place to provide, in section 319(3)(b) of the Criminal Code, that the promotion of wilful hatred against an identifiable group would not be an offence if the opinion was based on a belief in a religious text. Is that enough?

In an interview with CBC, Brian Kurz of B'nai Brith Canada said that religious rights need to be protected and that his association was looking for three amendments. I quote from his interview:

Number one is the notion that the quoting of scripture in itself will never be considered to be hateful. That should be obvious. And I should point out that, especially the controversy over Mel Gibson's movie and Garth Drabinsky's movie, which are supposed to be literal interpretations of the Christian Bible that nobody's ever been prosecuted for, for reading from those scriptures, even though certainly it's considered anti-Semitic.

I go on to quote:

...I think it needs to be clear that that's is not what's happening. I think, as well, that the need for the Attorney General to consent to a prosecution under Section 318 and 319, one that is the advocacy of genocide and the section that deals with the promotion of hatred in a public place should also be subject to the consent of the Attorney General and the religious defence that deals with the wilful promotion of hatred should deal with the other hatred sections as well.

Those are my fundamental questions when this bill goes to committee. First, do we need this bill? Are we already covered? Do we have laws that cover this off? I think they are legitimate questions that need to be asked. Second, is the freedom of religion appropriately protected?

**Hon. Tommy Banks:** Will the honourable senator accept a question?

**Senator Stratton:** Yes, certainly.

**Senator Banks:** I hearken back to what I heard the honourable senator say about the protection of religion. I will now read from the copy of Bill C-250 that I have before me.

**Senator Stratton:** Which clause?

**Senator Banks:** It is clause 2. It is different from what my friend quoted. I think it goes a little further, and I wonder if it gives him any comfort. It states:

Paragraph 319(3)(b) of the Act is replaced by the following:

(b) if, in good faith, the person expressed or attempted to establish by an argument an opinion on a religious subject or an opinion based on a belief in a religious text;

That seems to be broader than what the honourable senator quoted, and I wonder if we are talking about the same thing.

**Senator Stratton:** I would suggest, from my reading of the debates in the other place, that that question still remains. Further amendments were proposed with respect to this issue and were rejected. I am raising the question. We are at second reading, and I think it is a legitimate time to raise the question. I do not see anyone else doing so, and I think it is legitimate that we do. It is important that we appropriately study bills any of description.

**Senator Banks:** I absolutely agree. I just wonder whether the second part of the bill, clause 2 of Bill C-250, as I just read it, which says "as passed by the House of Commons," is the same one to which the honourable senator referred. I wonder whether the wording that I am looking at is sufficiently broad to address or refer to the question raised about the protection of persons expressing religious opinions. What I am looking at is slightly different and considerably broader than what I thought I heard my friend say in his remarks.

**Senator Stratton:** Again, I will reiterate simply that the House of Commons, in examining the bill, brought forward additional amendments with respect to this question. I think those amendments should be examined. I am not saying that the clause the Honourable Senator Banks has quoted does or does not answer the question. I am saying that we must look at the question with respect to the amendments that were rejected in the Commons. That is our responsibility.

**Hon. Anne C. Cools:** Honourable senators, would the Honourable Senator Stratton take another question?

**Senator Stratton:** Yes.

**Senator Cools:** I think that the honourable senator has articulated some concerns that are on many senators' minds and much of the uneasiness that many senators feel with this bill.

The honourable senator, in his remarks, referred to other sections of the Criminal Code that do what this bill purports to do. In doing so, he adverted, of course, to a principle of criminal law that essentially says that two laws should not attempt to do the same thing. In other words, the law should be quite clear. The Cohen report that the sponsor of the bill has alluded to also made that same point, namely, that there are already many laws on the books that speak to this problem.

In the sections of the Criminal Code that he cited, he did not include sections 22 and 810. I do not have section 810 in front of me, but I know that section 22 deals with counselling offences.

• (1540)

Section 22 states:

(1) Where a person counsels another person to be a party to an offence and that other person is afterwards a party to that offence, the person who counselled is a party to that offence, notwithstanding that the offence was committed in a way different from that which was counselled.

(2) Every one who counsels another person to be a party to an offence is a party to every offence that the other commits in consequence of the counselling that the person who counselled knew or ought to have known was likely to be committed in consequence of the counselling.

(3) For the purposes of this Act, "counsel" includes procure, solicit or incite...

I know about section 810 and I shall speak to it, but I do not have it in front of me. I believe Senator Banks is in possession of the Criminal Code. If he could pass it down to me, I would be happy to cite it to you.

I am wondering, in view of the honourable senator's concerns and in his perusal of the Criminal Code, whether he looked at those other sections? I am very suspicious as to why this particular amendment was necessary when, in point of fact, the Criminal Code already addresses the purposes that this bill purports to advance.

**Senator Stratton:** The point of my participation in the debate was to raise what I think are legitimate questions.

**Senator Cools:** They are very legitimate.

**Senator Stratton:** Honourable senators, I did not want to be comprehensive and extensive. I wanted to name examples. That was the purpose of my speech. It was not to raise every aspect of the Criminal Code with respect to the bill. That was not the point. The point was to raise questions with respect to this amendment so that when we move to second reading and then refer the bill to committee, we will more comprehensively look at the sections of the Criminal Code that may apply, and will determine on that examination whether this amendment is needed. That is my question.

I am not saying that this bill is bad. That is not my purpose here. My purpose as a member of the opposition is to point out potential problems with the bill. That is my job. That is exactly what I am trying to do here: point out potential pitfalls.

**Senator Cools:** Many senators will appreciate and share the concerns that the honourable senator has pointed out.

I have another question that I consider to be a parliamentary question and not so much on the substance of the bill itself.

I have been deeply concerned that this bill purports and claims to be a private member's bill but that it was compelled or driven through the House of Commons on the strength of the support of the government and the Minister of Justice. This is an extremely unusual phenomenon.

Does the honourable senator, as a member of the opposition have any concerns about a private member's bill which really is a government bill?



[Translation]

# POINT OF ORDER

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, this bill is a private member's bill from the House of Commons. It is not a government bill. It is not up to the opposition to play any particular role when there are government bills. Let us be clear.

[English]

**Hon. Terry Stratton:** I would like to answer the question.

**Senator Prud'homme:** No, we are on Senator Robichaud's point of order.

**The Hon. the Speaker:** We are on a point of order. I am not sure that there is a point of order —

**Senator Prud'homme:** Sit down.

**Senator Stratton:** I do not have a concern.

**The Hon. the Speaker:** On the point of order, I will hear interventions. I heard Senator Robichaud on his point of order.

Did you want to speak to the matter, Senator Prud'homme?

**Hon. Marcel Prud'homme:** The point does not change our role. A government bill or a bill that is not a government bill that passes in the house — I am speaking personally here — requires from me the same kind of scrutiny. We should not have a different set of standards. If this is a government bill, maybe the government will defend it with more passion. If it is a member's bill, they may listen. Personally, I make no difference.

If a bill comes from the House of Commons through a minister or through a member of the House of Commons, that does not change my role. I am speaking just for myself. I pay as much attention to this bill as to a government bill. I do not see why we should ask Senator Robichaud to defend a bill or to say that the government does not want to touch a bill. The bill has come from the House of Commons and I intend, like everyone else, to give it as much scrutiny as possible.

[Translation]

**Senator Robichaud:** Honourable senators, Senator Prud'homme claims that we do not want to deal with this bill. That is not so. They have tried to say, during debate on the bill, that it is a government bill, and it is not. I agree with the honourable senator that any legislation coming to us from the other place should be considered by all the honourable senators. We always do our best in this regard.

[English]

**The Hon. the Speaker:** On the point of order, Senator Cools?

**Hon. Anne C. Cools:** Honourable senators, I would like to carefully clarify my point. Bill C-250 is numbered as a private member's bill and it purports to be a private member's bill. However, this bill was propelled through the House of Commons on the strength of the support of the government. That has a lot to do with it. I can prove what I am saying, honourable senators. I have a copy of the House of Commons debates in my hand from September 17, 2003.

At page 7456, a question was directed to the Minister of Justice, Mr. Cauchon:

**Mr. Andrew Telegdi (Kitchener-Waterloo, Lib.):** Mr. Speaker, my question is for the Minister of Justice...

Will the minister confirm his support for Bill C-250 and confirm as well that particularly with the Liberal amendment...

It is described as a "Liberal amendment."

...passed in the House earlier this year, the bill fully protects religious freedoms and religious texts such as the Bible, the Koran or the Torah?

**Hon. Martin Cauchon (Minister of Justice and Attorney General of Canada, Lib.):** Mr. Speaker, I would like to thank the member for the question. It is a very important topic in Bill C-250.

I would like to tell the House that indeed we...

That is, "we," the government.

...support the bill as amended. Of course when it is looked at, it is consistent with the government's position and policy. That bill will include sexual orientation in the hate propaganda provisions of the Criminal Code while protecting at the same time religious beliefs, that is to say, opinions and texts as well.

I would submit, honourable senators, that that is a significant fact, and it is an unusual fact. As part of our principles, Your Honour and honourable senators, when the government acts, the government is supposed to always act responsibly, and under the notion of ministerial responsibility. The principle is that if the government supports an initiative and if the government adopts a position on that initiative, then the government is supposed to take that and do it in a very public way and make it its own, in other words a government bill. There is no such thing as a minister offering private support to any initiative or to any matter. Once a minister acts, he acts for the entire government. We must understand that; cabinet speaks with one voice.

The rule of Parliament has been, for hundreds of years, that if a minister sees a bill and believes that it is good public policy, he is supposed to then take that bill and move it along as his own, in other words, make it a government initiative. This has happened on many different questions.

Honourable senators, this is a question that concerns me. It concerns us and it concerns the relationship between the minister and Parliament, the minister and his caucus, and the relationship between the minister, the House of Commons and the Senate of Canada.

• (1550)

I submit to honourable senators that what we have here is a novel phenomenon. It is a bill which has the form and the number of a private bill, but it has worked its way through the House of Commons on the strength of the support of the government and its supporters. I have just put on the record a citation which clearly proves the position of the minister.

What we have here, honourable senators, is at minimum a minister-supported and government-supported initiative which, if it does not change the form of the bill, certainly alters the character of the bill. I submit to honourable senators as well that it alters the character of the treatment of the bill in this chamber because it means that in this chamber the supporters of the minister or the government will be attempting to mime, if not to imitate or to match, the activity of the government in the House of Commons.

I have no problem with any government doing anything. I do have problems with ministers and governments acting without responsibility and furtively.

That is the real question I was asking of Senator Stratton. When the Deputy Leader of the Government in this place says that the opposition has no role or no obligation in this matter, nothing could be further from the truth. It is the role of not only the opposition but the role of every member of Parliament to underscore and uphold the principle that ministers and governments in this country act under ministerial responsibility. If the deputy leader in this place does not believe they should, then we should unmask the lie and admit that there is no ministerial responsibility in this country.

This matter has not been raised and it has not been addressed, but it is a critical matter. If Minister Cauchon had so believed in the substance of Bill C-250, he should have moved it as a government bill. Because what has happened and the way it has proceeded —

**Senator Robichaud:** Order!

**Senator Cools:** — is that he has eluded ministerial responsibility. I have a lot of problems with that.

**The Hon. the Speaker:** Senator Robichaud, thank you for your point of order. I thank honourable senators for their interventions.

This is a non-issue. It is not for us, through me or otherwise, to question the proceedings in the other place. That is done there. We accept what we receive from them just as we expect them to accept what we send to them.

This bill has come to us as a private member's bill and is characterized as such. It must be dealt with under our rules and proceedings in terms of first reading and the proceedings that we, as a parliamentary body, take to deal with a private member's bill.

I remind honourable senators of a provision in our rules that we sometimes forget. No honourable senator has raised it. This is an opportunity for me to remind honourable senators of rule 46, which states:

The content of a speech made in the House of Commons in the current session may be summarized, but it is out of order to quote from such a speech unless it be a speech of a Minister of the Crown which is related to government policy. A Senator may always quote from a speech made in a previous session.

**Senator Cools:** That is what I did. I quoted the minister.

**The Hon. the Speaker:** There is no point of order. The bill is clearly here as a private member's bill.

I remind honourable senators that there is approximately one minute left of Senator Stratton's time. Senator Cools was speaking.

**Senator Cools:** No, I was not speaking. I was asking Senator Stratton a question.

My question had to do with my concern that a matter of public policy was proceeding with government support but without the notion of ministerial responsibility.

I have no doubt that the bill is constructed as a bill, as all bills are constructed. The question I was raising involved the different treatment that a bill will have in this chamber. My concern was with what was going on in this chamber, not so much what had gone on in the House of Commons. It was Senator Robichaud who raised all of that.

My question to Senator Stratton was in respect of whether he had any opinion on the unusual way this particular bill is proceeding. We must agree that it is at least unusual. He had tried to answer the question, by the way.

**Senator Stratton:** None.

On motion of Senator Cools, debate adjourned.

## SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

### BUDGET ON STUDY OF PUBLIC HEALTH GOVERNANCE AND INFRASTRUCTURE—REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the twelfth report of the Standing Senate Committee on Social Affairs, Science and Technology (budget—study on public health) presented in the Senate on September 30, 2003.—(*Honourable Senator LeBreton*)

**Hon. Marjory LeBreton** moved the adoption of the report.

Motion agreed to and report adopted.



## NATIONAL SECURITY AND DEFENCE

### BUDGET ON STUDY OF NEED FOR NATIONAL SECURITY POLICY—REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the fifteenth report of the Standing Senate Committee on National Security and Defence (budget—release of additional funds (study on the need for a National Security Policy)) presented in the Senate on September 30, 2003.—(*Honourable Senator Kenny*).

**Hon. Colin Kenny** moved the adoption of the report.

He said: Honourable senators, I wish to say that our committee has virtually exhausted its funding and the adoption of this report would permit us to continue our work for another month or so.

**The Hon. the Speaker:** Is the house ready for the question?

**Hon. Senators:** Question!

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

Motion agreed to and report adopted.

[*Translation*]

## STUDY ON OPERATION OF OFFICIAL LANGUAGES ACT AND RELEVANT REGULATIONS, DIRECTIVES AND REPORTS

### REPORT OF OFFICIAL LANGUAGES COMMITTEE—DEBATE ADJOURNED

The Senate proceeded to consideration of the Fourth Report (Interim) of the Standing Senate Committee on Official Languages entitled "Official Languages: 2002-2003 Perspective, tabled in the Senate on October 1, 2003.—(*Honourable Senator Losier-Cool*).

**Hon. Rose-Marie Losier-Cool:** Honourable senators, it was with great pleasure yesterday that I tabled the Fourth Report of the Standing Senate Committee on Official Languages. The report, entitled "Official Languages: 2002-2003 Perspective", marks the beginning of an annual tradition for our committee.

On December 5, 2002, you asked our committee to study the operation of the Official Languages Act within the federal institutions subject to the Act. The mandate you have entrusted to us is an ongoing one. Our committee decided that one of its annual activities would be to review the three lengthy annual reports that the Official Languages Act requires of the three main federal agencies with responsibility for official languages, namely the Office of the Commissioner of Official Languages, Canadian Heritage, and the Treasury Board.

Each year, our committee hears from representatives of these three agencies, in addition to other witnesses as it sees fit. Each year, our committee submits a report to the Senate on the status of the official languages in Canada, as seen by the Office of the Commissioner of Official Languages, Canadian Heritage, and the Treasury Board, but also as experienced by other witnesses from whom we hear.

• (1600)

The fourth report that your committee tabled yesterday deals with the status of the official languages in Canada for 2002-2003. It will be noted that this report also reflects our committee's opinion of the federal Action Plan for Official Languages made public by Minister Stéphane Dion on March 12.

[*English*]

Our committee supports the goals and the five-year funding proposed in Minister Dion's plan. In particular, I want to draw your attention to the federal government's commitment to education from preschool to university, including distance education. Committee members believe that receiving one's education in one's official language of choice is an excellent way to defend that language and to prevent the assimilation of official language minority communities.

You may already know that our committee will be travelling to Western Canada in three weeks' time to hear from these communities on this very specific topic of education. However, since education is under provincial jurisdiction, our committee recommends in our fourth report that the federal government develop a framework for cooperation with the provinces and territories to ensure their full participation in achieving the objectives set out in Mr. Dion's plan.

[*Translation*]

The committee also recommends similar cooperation in health and immigration. It also addressed arts and culture. As well, we took an in-depth look at the entire issue of accountability in connection with the various federal institutions subject to the Official Languages Act, particularly those departments with responsibility for administering the additional funding proposed in the Dion plan.

The committee made no fewer than seven recommendations so that Canadian Heritage and other federal institutions can evaluate their official languages programs more effectively and improve program accountability.

[*English*]

Honourable senators, our fourth report is a very interesting read indeed and I urge you all to go through it and acquaint yourselves with the successes and challenges of Canada's official language minority community.

I would like to take this opportunity to thank all of my colleagues on the committee for their unflagging dedication to the cause. Our committee is barely a year old, yet, despite serious scheduling conflicts that force us to meet only once every two weeks, we have managed to meet 15 times so far this session to hear from 40 key witnesses, to hold a total of 32 hours of meetings, and to tackle a host of crucial and other pressing issues.

[*Translation*]

**Hon. Eymard G. Corbin:** Honourable senators, I would like to ask a question to Senator Losier-Cool. Why has she entitled this an "interim" report? Does that imply that there is more to come, or that it may be subject to change? Is this a report on the committee's definitive views on the issue or is it subject to revision?

**Senator Losier-Cool:** Honourable senators, I do not see the word "interim" on the report of the Standing Senate Committee on Official Languages.

**Senator Corbin:** I will be more specific. In item 16, on page 8 of the Order Paper, we read:

Consideration of the Fourth Report (Interim) of the Standing Senate Committee on Official Languages

The honourable senator was perhaps not the person who wrote this word, but the word "interim" means that the report is subject to review.

**Senator Losier-Cool:** The report is not subject to review; it is truly the fourth report of the committee, the report for this year. I am sorry, but I do not know where the word "interim" came from.

**Hon. Jean-Robert Gauthier:** Honourable senators, this is a rather important report that the committee has worked on for some months. The report deals with sometimes controversial subjects, but it also addresses these issues.

I would like to take the necessary time to explain the recommendations in detail and why the committee arrived at these specific recommendations. Therefore, I move that debate be adjourned.

[English]

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I have a question for the Chair of the Official Languages Committee. What priority has your committee given to legislation that has been sent to your committee by this house? It is my understanding that legislation was referred to your committee last spring before the summer recess. Could you advise the house whether legislation takes priority over these studies in your committee? What is the status of the legislation that has been referred to your committee by the Senate?

**Senator Losier-Cool:** I thank Senator Kinsella for that question. The first priority for our committee was the mandate we received from the Senate to study the annual reports, as is reflected in this report. Two bills were referred to our committee by the Senate. We have begun to study Bill S-11 and we plan to start our study of Bill S-14 by the end of October or the first week of November.

**Senator Kinsella:** That leads to the question that should be of interest to all honourable senators, that is, what is the policy of the chamber? Indeed, do we have a policy on whether our

standing committees ought to give priority to legislation over studies or other orders of reference?

Perhaps I ought not to ask that question of the distinguished Chair of the Official Languages Committee. Perhaps honourable senators might reflect on the question. Perhaps it is more appropriate that I ask that question of the Chair of the Rules Committee during Question Period.

• (1610)

**Senator Losier-Cool:** The question of priority has been a debate in committee that has never been determined. Honourable senators are aware that the Official Languages Committee is young and has not had many bills before it for consideration. I am not aware of any rule that states that bills must begin in committee.

**Senator Corbin:** Honourable senators, is it not a fact that government legislation takes priority over everything in committee studies? However, private members' bills do not necessarily occupy that position. It is for the committee to make its own determinations of priority matters and then take sequential matters into account. If a committee were engaged in a study, or nearing completion of a study, and a private bill were introduced, it would surely make more sense to complete the study and then address the private bill. This is the current situation in that committee.

On motion of Senator Gauthier, debate adjourned.

[Translation]

## ADJOURNMENT

Leave having been given to revert to Notices of Motions:

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(h), I move:

That when the Senate adjourns today, it do stand adjourned until Tuesday, October 7, 2003, at 2 p.m.

**The Hon. the Speaker:** Honourable senators, is leave granted?

**Hon. Senators:** Agreed.

Motion agreed to.

The Senate adjourned until Tuesday, October 7, 2003, at 2 p.m.



**THE SENATE OF CANADA**  
**PROGRESS OF LEGISLATION**  
**(2nd Session, 37th Parliament)**  
**Thursday, October 2, 2003**

**GOVERNMENT BILLS**  
**(SENATE)**

No.	Title	1 <sup>st</sup>	2 <sup>nd</sup>	Committee	Report	Amend	3 <sup>rd</sup>	R.A.	Chap.
S-2	An Act to implement an agreement, conventions and protocols concluded between Canada and Kuwait, Mongolia, the United Arab Emirates, Moldova, Norway, Belgium and Italy for the avoidance of double taxation and the prevention of fiscal evasion and to amend the enacted text of three tax treaties.	02/10/02	02/10/23	Banking, Trade and Commerce	02/10/24	0	02/10/30	02/12/12	24/02
S-13	An Act to amend the Statistics Act	03/02/05	03/02/11	Social Affairs, Science and Technology	03/04/29	0	03/05/27		

**GOVERNMENT BILLS**  
**(HOUSE OF COMMONS)**

No.	Title	1 <sup>st</sup>	2 <sup>nd</sup>	Committee	Report	Amend	3 <sup>rd</sup>	R.A.	Chap.
C-2	An Act to establish a process for assessing the environmental and socio-economic effects of certain activities in Yukon	03/03/19	03/04/03	Energy, the Environment and Natural Resources	03/05/01	0	03/05/06	03/05/13	7/03
C-3	An Act to amend the Canada Pension Plan and the Canada Pension Plan Investment Board Act	03/02/26	03/03/25	Banking, Trade and Commerce	03/03/27	0	03/04/01	03/04/03	5/03
C-4	An Act to amend the Nuclear Safety and Control Act	02/12/10	02/12/12	Energy, the Environment and Natural Resources	03/02/06	0	03/02/12	03/02/13	1/03
C-5	An Act respecting the protection of wildlife species at risk in Canada	02/10/10	02/10/22	Energy, the Environment and Natural Resources	02/12/04	0	02/12/12	02/12/12	29/02
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No.	Title	1 <sup>st</sup>	2 <sup>nd</sup>	Committee	Report	Amend	3 <sup>rd</sup>	R.A.	Chap.
C-10	An Act to amend the Criminal Code (cruelty to animals and firearms) and the Firearms Act	02/10/10	02/11/20	Legal and Constitutional Affairs	02/11/28	Divided Message from Commons concurring with division 03/05/07			
C-10A	An Act to amend the Criminal Code (firearms) and the Firearms Act	-	-	Legal and Constitutional Affairs	02/11/28	0	02/12/03	03/05/13	8/03
C-10B	An Act to amend the Criminal Code (cruelty to animals)	-	-	Legal and Constitutional Affairs	03/05/15	5	03/05/29 Message from Commons- agree with two amendments, disagree with two, and amend one 03/06/09 Referred to committee 03/06/11 Reported 03/06/12 Report adopted (insist on one, replace one, amend one) 03/06/19 Message from Commons- disagree with Senate's amendments 03/09/30		
C-11	An Act to amend the Copyright Act	02/10/10	02/10/30	Social Affairs, Science and Technology	02/12/05	0	02/12/09	02/12/12	26/02
C-12	An Act to promote physical activity and sport	02/10/10	02/10/23	Social Affairs, Science and Technology	02/11/21	0 + 1 at 3 <sup>rd</sup> 02/12/04 2 at 3 <sup>rd</sup> 03/02/04	03/02/04	03/03/19	2/03
C-14	An Act providing for controls on the export, import or transit across Canada of rough diamonds and for a certification scheme for their export in order to meet Canada's obligations under the Kimberley Process	02/11/19	02/11/26	Energy, the Environment and Natural Resources	02/12/04	0	02/12/05	02/12/12	25/02



No.	Title	1 <sup>st</sup>	2 <sup>nd</sup>	Committee	Report	Amend	3 <sup>rd</sup>	R.A.	Chap.
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C-227	An Act respecting a national day of remembrance of the Battle of Vimy Ridge	03/02/25	03/03/26	National Security and Defence	03/04/02	0	03/04/03	03/04/03	6/03
C-249	An Act to amend the Competition Act	03/05/13	03/09/17	Banking, Trade and Commerce					
C-250	An Act to amend the Criminal Code (hate propaganda)	03/09/18							
C-300	An Act to change the names of certain electoral districts	02/11/19	03/06/03	Legal and Constitutional Affairs					
C-411	An Act to establish Merchant Navy Veterans Day	03/06/12	03/06/17	National Security and Defence	03/06/18	0	03/06/19	03/06/19	17/03

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S-7	An Act to protect heritage lighthouses (Sen. Forrestall)	02/10/08	03/02/25	Social Affairs, Science and Technology	03/06/19	0	03/09/24		
S-8	An Act to amend the Broadcasting Act (Sen. Kinsella)	02/10/09	02/10/24	Transport and Communications	03/03/20	0	03/04/02		
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No.	Title	1 <sup>st</sup>	2 <sup>nd</sup>	Committee	Report	Amend	3 <sup>rd</sup>	R.A.	Chap.
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S-14	An Act to amend the National Anthem Act to reflect the linguistic duality of Canada (Sen. Kinsella)	03/02/11	03/06/17	Official Languages					
S-15	An Act to remove certain doubts regarding the meaning of marriage (Sen. Cools)	03/02/13	Dropped from Order Paper pursuant to Rule 27(3) 03/06/05						
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# Debates of the Senate

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OFFICIAL REPORT  
(HANSARD)

**Tuesday, October 7, 2003**

HONOURABLE LUCIE PÉPIN  
SPEAKER *PRO TEMPORE*



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## THE SENATE

Tuesday, October 7, 2003

The Senate met at 2 p.m., the Speaker *pro tempore* in the Chair. [Later]

Prayers.

### SENATORS' STATEMENTS

#### THE LATE ISRAEL H. ASPER, O.C.

##### TRIBUTES

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, it was with great sadness that I learned just minutes ago of the death of Israel Asper, better known to all of his friends as Izzy. I first met Izzy when a Mercedes drove into my yard in the fall of 1977. Out popped what I recognized as the former Leader of the Liberal Party of Manitoba, whom I had known by reputation but not in person. My husband and I had just moved to Winnipeg, and Mr. Asper was curious about the Liberal sign outside of our house. A provincial election had just been called and this house did not usually have a Liberal sign in front of it. So began our friendship with him and Babs, his wife of many years, and his children Gail, David and Leonard.

Izzy was a lawyer by profession, a jazz enthusiast by choice and a businessman of the highest order. He was also a great and devoted Canadian and Manitoban, who chose consistently to make his home in our province despite the allure of living elsewhere. Indeed, Babs and Izzy just moved into their new condominium last Friday. During a chat with him that evening at the Prime Minister's dinner, he informed me that he had just shipped boxes of political memorabilia, including 3,000 Izzy buttons, to his new condo.

Izzy was a business success. I am certain all honourable senators know of his ownership of CanWest Global Communications Corporation and the *National Post*. He believed money was useful to support others less fortunate and to support the enrichment of his community. His contributions to the city of Winnipeg are legendary: the business school at the University of Manitoba; the Asper Centre for the educational, sporting and cultural life of the Jewish community, which was named for his parents; and the human rights museum that is still a dream but one that is on its way to becoming a reality. He also supported the theatre and ballet and, above all, his beloved jazz. One of his most recent projects was an all-jazz radio station in Winnipeg.

Mr. Asper never forgot his rural roots. He was born and raised in Minnedosa, a farming community west of Winnipeg.

Honourable senators, to Babs, her children and her grandchildren, I offer my deepest sympathy. Izzy Asper was a good man. He will be missed where he touched so many with his generosity and his love of life. He lived life to the fullest and will be known forevermore as a man who gave his all.

**Hon. Terry Stratton:** Honourable senators, I was late coming to the chamber and I had not heard about the passing of Mr. Izzy Asper. Therefore, I should like to speak further to this tomorrow, because even on our side, in Manitoba, he was considered a very remarkable man.

#### GOVERNOR GENERAL

##### STATE VISIT TO RUSSIA

**Hon. Landon Pearson:** Honourable senators, I rise today to add my voice to that of Senator Spivak's, who spoke last Thursday to the Governor General's state visit to Russia. I would like to express my unreserved admiration for the Right Honourable Adrienne Clarkson and my appreciation for having been included in the remarkable delegation she had with her.

Having lived in Moscow in the early 1980s, I know only too well the challenges of representing Canada to a country whose natural tendency is to focus on Europe or on the United States. I am aware of Russia's abiding respect for the panoply of power. This means that a state visit has unusual significance for both the leaders and the people, especially when a person such as our Governor General conducts this kind of visit with her charismatic presence and her singular ability to respond to any situation with intelligence and grace.

The media coverage in Russia was wide, varied and generally positive. The image of Canada has now been more firmly planted in the minds of the Russian public than at any time since Paul Henderson scored his winning goal in 1972. That image encompasses much more than hockey, beginning with Mr. John Ralston Saul, who is already respected in Russia as a thinker and a writer. Russians are more aware of the richness of our culture; of the value we place on federalism and on the preservation of official languages; of the excellence of our scientists; and, notably, of the stature and sophistication of our northern peoples.

Honourable senators, aside from raising the profile of Canada in Russia, the central purpose of the state visit was to discuss the modern North. Canada and Russia are neighbours across the Arctic and, together, contain 80 per cent of the lands, peoples and resources above the Arctic Circle. We have considerable mutual interests. The months of preparation for this visit, the visit itself and the extensive work that will follow will repay a hundredfold any public investment in that trip. Doors have been opened that would otherwise have remained closed and connections have been established that will greatly enhance our capacity to work together on issues of profound importance to us all: sustainable development in the North, the protection of the Arctic environment and the empowerment of indigenous peoples of the circumpolar region.

# STATE VISIT TO RUSSIA— RESPONSIBILITY OF MINISTERS OF THE CROWN

**Hon. Lowell Murray:** Honourable senators, I too would like to speak about the Governor General of Canada and her constitutional position vis-à-vis the government.

I had no opinion when Madam Clarkson was appointed to that office because I did not know much about her except what I had been able to observe through her media appearances over the years. However, one has only to see her in the company of children, veterans, people in Northern Canada, Aboriginals and others to realize that she is ideally suited to the post of Governor General. She has done a splendid job. More than that, her speeches, and in particular, I think of the one delivered by her at the dedication of the Tomb of the Unknown Soldier, are the most literate, eloquent and sometimes moving and evocative that anyone has given in this country since former Governor General Vincent Massey, and perhaps before that time.

On the constitutional point, Governors General do not act except on the advice of ministers. Our Governor General is in Russia and other countries on the advice of her ministers. I am appalled by the failure of ministers of the Crown to step forward and take responsibility for what the Governor General is doing on behalf of Canada. It is the job of ministers — someone — either the Prime Minister, the President of the Privy Council or, in the case of this trip, the Minister of Foreign Affairs to step forward.

• (1410)

Honourable senators, as an example of the way matters should be handled, there was a case a mere few months ago in Nova Scotia concerning criticism in the media and some political circles of certain expenses that had been undertaken at Government House in Halifax. I believe they related to the decorating or redecorating of the place. The appropriate minister of the Crown in the provincial government of Nova Scotia stepped forward immediately, gave an explanation, took responsibility and that was it.

There is no reason in the world that officers from Rideau Hall should not appear before a parliamentary committee and answer questions concerning the budget of that place, as they appear to be doing. As for the Governor General herself, she is above politics, but the ministers are not. It is their job to step forward and take responsibility for her actions. In my observation, they have utterly failed their duty in that respect.

## PRINCE EDWARD ISLAND

### VOTER TURNOUT IN RECENT PROVINCIAL ELECTION

**Hon. Elizabeth Hubley:** Honourable senators, just two weeks ago, on September 29, the people of Prince Edward Island voted in a provincial general election. There were two notable outcomes: The Progressive Conservative Party, under the leadership of Pat Binns, was re-elected to a third consecutive term; and the new Leader of the Liberal Party, Robert Ghiz, was elected, together with a strengthened opposition.

However, there was something else that distinguished the recent Prince Edward Island election. Islanders were obliged to cast their ballots on the morning after one of the most violent hurricanes to strike the province in over 40 years. In fact, when the polls officially opened on that Monday morning, the wind and rain was still buffeting parts of the province. The streets and roadways were littered with fallen hydro lines and trees. Many polling stations were without electricity throughout the day and some voters had to exercise their franchise by candlelight or in the glow of a kerosene lamp, as their forefathers did a century ago.

The RCMP and other authorities had cautioned people to stay off the roads, except in an emergency, but Islanders were not deterred. In spite of Hurricane Juan, and under the most severe circumstances imaginable, Islanders voted, and once again in record numbers.

The voter turnout on September 29 in Prince Edward Island was a remarkable 83 per cent. Central Canadian newspapers have been suitably impressed. "P.E.I. shows us how," trumpeted *The Globe and Mail*. "What is it that the good folks of Prince Edward Island have that we don't?" asked the *Ottawa Sun*.

Honourable senators, Islanders have demonstrated a high level of civic responsibility throughout their history, but it must also be pointed out that all Canadians have such a reputation. The International Institute for Democracy and Electoral Assistance in Stockholm, Sweden, ranks Canada seventy-seventh out of 172 countries in voter turnout, with an average of 68.4 per cent in federal elections. The United States, by comparison, is ranked one-hundred thirty-ninth, with an average turnout of only 48.3 per cent.

Why are Prince Edward Islanders so motivated to exercise their democratic franchise? To begin with, my province is like one big neighbourhood; Islanders have a strong sense of community. Moreover, politics is the lifeblood of the province. We live and breathe it. We also can look to our early colonial history for an explanation. Islanders were tenants on their own land for nearly a century, enslaved to a band of absentee landlords and their agents. It was the tenant farmers who gave impetus to political change in Prince Edward Island. In 1851, when Prince Edward Island became the second British North American colony to be granted responsible government, after Nova Scotia, Islanders treasured their new-found democratic voice. From that early time Prince Edward Islanders have been keen to participate in the electoral process. The vote of September 29, in the middle of a hurricane, was only the latest manifestation of that democratic zeal.

In conclusion, honourable senators, I would like to congratulate the candidates from all political parties who contested in the 2003 Prince Edward Island general election, as well as the Chief Electoral Officer, Mr. Merrill Wigginton, and the staff of Elections P.E.I. for their perseverance and commitment to public service. Most of all, I want to congratulate Islanders for once again putting democracy into action.



[Translation]

## ROUTINE PROCEEDINGS

### COMMISSIONER OF OFFICIAL LANGUAGES

#### 2002-03 ANNUAL REPORT TABLED

**The Hon. the Speaker pro tempore:** Honourable senators, I have the honour of tabling the 2002-03 annual report of the Office of the Commissioner of Official Languages, pursuant to section 66 of the Official Languages Act.

### SUPREME COURT JUSTICE MORRIS J. FISH

#### COPY OF COMMISSION TABLED

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I have the honour to table a copy of the commission, dated August 5, 2003, constituting the Honourable Morris Fish, Puisne Judge of the Supreme Court of Canada, Deputy of the Governor General, to do in Her Excellency's name all acts on her part necessary to be done during Her Excellency's pleasure.

I would ask that the commission be printed in the *Journals of the Senate* of this day.

(For text of commission, see today's Journals of the Senate, p. 1123.)

### COMMISSIONER OF THE ENVIRONMENT AND SUSTAINABLE DEVELOPMENT

#### 2002-03 ANNUAL REPORT TABLED

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I have the honour to table, in both official languages, a copy of the 2003 report by the Commissioner of the Environment and Sustainable Development to the House of Commons.

[English]

### SPECIFIC CLAIMS RESOLUTION BILL

#### REPORT OF COMMITTEE

**Hon. Thelma J. Chalifoux,** Chair of the Standing Senate Committee on Aboriginal Peoples, presented the following report:

Tuesday, October 7, 2003

The Standing Senate Committee on Aboriginal Peoples has the honour to present its

#### FIFTH REPORT

Your Committee, to which was again referred Bill C-6, An Act to establish the Canadian Centre for the Independent Resolution of First Nations Specific Claims to provide for the filing, negotiation and resolution of

specific claims and to make related amendments to other Acts, in obedience to its Order of Reference dated Thursday, September 25, 2003, has examined the said Bill and now reports the same without further amendment.

Your Committee also made certain observations, which are appended to this report.

Respectfully submitted,

THELMA J. CHALIFOUX  
Chair

(For text of observations, see today's Journals of the Senate, p. 1125.)

**The Hon. the Speaker pro tempore:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Robichaud, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.

[Translation]

## HUMAN RIGHTS

### BUDGET ON STUDY OF LEGAL ISSUES AFFECTING ON-RESERVE MATRIMONIAL REAL PROPERTY ON BREAKDOWN OF MARRIAGE OR COMMON LAW RELATIONSHIP— REPORT OF COMMITTEE PRESENTED

**Hon. Shirley Maheu,** Chair of the Standing Senate Committee on Human Rights, presented the following report:

Tuesday, October 7, 2003

The Standing Senate Committee on Human Rights has the honour to present its

#### SIXTH REPORT

Your Committee, was authorized by the Senate on Wednesday, June 4, 2003, to examine and report upon key legal issues affecting the subject of on-reserve matrimonial real property on the breakdown of a marriage or common law relationship and the policy context in which they are situated. In particular, the Committee was authorized to examine:

The interplay between provincial and federal laws in addressing the division of matrimonial property (both personal and real) on-reserve and, in particular, enforcement of court decisions;

The practice of land allotment on-reserve, in particular with respect to custom land allotment;

In a case of marriage or common-law relationships, the status of spouses and how real property is divided on the breakdown of the relationship; and,

Possible solutions that would balance individual and community interests.

Pursuant to section 2:07 of the *Procedural Guidelines for the Financial Operation of Senate Committees*, the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that Committee are appended to this report.

Respectfully submitted,

SHIRLEY MAHEU  
Chair

(For text of budget, see today's Journals of the Senate, Appendix, p. 1136.)

**The Hon. the Speaker pro tempore:** Honourable senators, when shall this report be taken into consideration?

On motion of senator Maheu, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

• (1420)

## AMENDMENTS AND CORRECTIONS BILL, 2003

### FIRST READING

**The Hon. the Speaker pro tempore** informed the Senate that a message had been received from the House of Commons with Bill C-41, to amend certain acts.

Bill read the first time.

**The Hon. the Speaker pro tempore:** Honourable senators, when shall this bill be read the second time?

On motion of Senator Robichaud, bill placed on the Orders of the Day for second reading, two days hence.

## OFFICIAL LANGUAGES

### BILINGUAL STATUS OF CITY OF OTTAWA— PRESENTATION OF PETITION

**Hon. Jean-Robert Gauthier:** Honourable senators, pursuant to rule 4(h), I have the honour to present to the Senate a petition signed by 2,000 persons, asking that Ottawa be declared a bilingual city in order to reflect the linguistic duality of the country.

The petitioners wish to draw the attention of Parliament to the following:

That the Canadian Constitution provides that English and French are the two official languages of our country and have equality of status and equal rights and privileges as to their use in all institutions of the government of Canada;

That section 16 of the Constitution Act, 1867 designates the City of Ottawa as the seat of government of Canada;

That citizens have the right in the national capital to have access to the services provided by all institutions of the Government of Canada in the official language of their choice; and

That the capital of Canada has a duty to reflect the linguistic duality at the heart of our collective identity and characteristic of the very nature of our country.

Therefore, the petitioners request that Parliament confirm, in the Constitution of Canada, that the city of Ottawa, capital of Canada, be declared officially bilingual, under section 16 of the Constitution Act, 1867 and 1982.

[English]

## QUESTION PERIOD

### NATIONAL DEFENCE

#### AFGHANISTAN—DEATH OF TWO SOLDIERS— SUITABILITY OF UNARMoured VEHICLES— RESIGNATION OF MINISTER

**Hon. J. Michael Forrestall:** Honourable senators, may I first join in expressing, through the Leader of the Government in the Senate, sympathy to the family of Mr. Izzy Asper and to the people of Manitoba for the death of such an outstanding Canadian.

I have a series of questions for the Leader of the Government. She will be familiar with the subject matter because I asked earlier about the replacement program for the Iltis Jeeps, which made up most of the rolling capability of the reserve forces in Prince Edward Island.

Can the Leader of the Government in the Senate confirm the following facts with regard to the most unfortunate deaths of two Canadian soldiers in Afghanistan? Can she confirm that Canada was advised by our American allies not to take unarmoured vehicles to Afghanistan for safety purposes, and that our Iltis vehicles are unarmoured, at the end of their service life and due for replacement?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I cannot confirm or deny. My honourable friend refers to a statement in the newspaper that may or may not be true.

What I do know is what Major-General Leslie said, which I think is very important. He said, "You can't win the hearts and minds of the Afghan people as you speed by in an armoured vehicle." This can-do attitude of reaching out to the hearts and minds and helping people is deeply ingrained in the spirit of the Canadian Forces.

**Senator Forrestall:** Can the minister also confirm that the Iltis has been plagued by breakdowns in theatre and, in a CanWest news story dated August 21, was described by a soldier in theatre as "a bit of an albatross around our necks"?

Can she also confirm that when any of our allies left the compounds — for example, our Turkish friends — the only travelled in armoured columns because of mine and rocket-propelled grenade threats?



**Senator Carstairs:** What I can tell the honourable senator this afternoon is that the light utility vehicle known as the Ilitis is currently operating at an 89 per cent reliability rate in Kabul, which is considered by the military to be quite acceptable given the harsh environment. I can also tell the honourable senator that the troops sometimes travel on foot, in armed vehicles or in this Jeep, and that decision is made by the commanding officers.

**Senator Forrestall:** On or about July 19 of this year, the Minister of National Defence stated that he would resign if any Canadian died as a result of a lack of preparation or equipment. Has the Prime Minister asked for the resignation of the Minister of National Defence, and if not, why not? In the absence of that request, has the Minister of National Defence offered the resignation that he promised?

**Senator Carstairs:** Honourable senators, no, the Honourable Minister of Defence has not offered his resignation because he stands by his statement that the preparation and the equipment of our troops in Kabul are appropriate.

• (1430)

Honourable senators, it is important that this Senate understand that an investigation of this tragedy is now underway. However, the preliminary investigation would indicate that this was a 20-pound Russian land mine that would have blown up anything. It is also appropriate to tell this chamber that it appears to have been of extremely recent origin, since vehicles were travelling on that same path within a two-hour period of this terrible and tragic accident. The service of our military in this case has been exemplary. The Minister of Defence and, I think, all Canadians, are very proud of the work we are doing in Kabul.

**Senator Forrestall:** We are all proud of the work our troops are doing, but many of us are very concerned about their safety and well-being. The use of land mines is something we deplore; about that there is no question.

The question is not, as reflected by the Leader of the Government, about the suitability of the equipment, the question is whether the equipment provided to our Canadian Forces as we send them overseas is adequate to do the job in a safe manner. There is a place for rubber vehicles and a place for tracked vehicles. This is not the first time that a well-worn or well-used highway, after having been traversed on a number of occasions by a number of different vehicles, has been the site of the death of Canadians. The minister does not have to go too far back in memory to recall that. We know it has happened.

My question is this: When will our troops in Afghanistan be provided with equipment that will ensure their safety as they travel around the countryside?

**Senator Carstairs:** Honourable senators, it is the view of the military that they now have safe, adequate and appropriate equipment.

**Senator Forrestall:** Is that what they call an albatross around their necks?

## TREASURY BOARD

### OFFICE OF COMPTROLLER GENERAL— DEPARTMENTAL COMPTROLLERS

**Hon. David Tkachuk:** Honourable senators, the *Ottawa Citizen* of October 1, 2003, reported that, to prevent abuses of public money similar to those alleged in the Radwanski affair, Paul Martin promised to hire a financial comptroller for every department and agency who would report to a comptroller general responsible for the overall government.

Departmental comptrollers would no longer be under the direct authority of the departments in which they work. Could the government advise the Senate as to whether there is a valid policy reason for this not already being the case, or is it a matter of nobody thinking that this would be necessary?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, since this is a proposal being put forward by Paul Martin, who is not yet the Prime Minister of Canada, I would suggest that a question would be more appropriately placed when the new Prime Minister is chosen and takes office.

**Senator Tkachuk:** Honourable senators, in the same article Mr. Martin said, "I suggested some time ago" — obviously, when he was a member of the government — "that there ought to be within every government department, agency — a comptroller reporting to a comptroller general."

Could the Leader of the Government advise the Senate why the government did not follow up on Mr. Martin's suggestion at the time it was made? Did the resistance come from the Prime Minister, who seems to think that the system is working because Mr. Radwanski was caught? Did it come from Treasury Board, which did not want the aggravation of implementing the idea, or did Mr. Martin simply not feel strong enough to pursue the idea aggressively?

**Senator Carstairs:** Honourable senators, I am the Leader of the Government in the Senate. The Prime Minister of Canada is the Right Honourable Jean Chrétien. I will answer questions with respect to the policies of this government. I will not answer questions about the hypothetical policies of who may be the next Prime Minister.

**Senator Comeau:** Go to the caucus tonight!

## IMMIGRATION AND CITIZENSHIP

NATIONAL BIOMETRIC IDENTIFICATION CARD—  
NATIONAL FORUM—PARTICIPATION  
OF PRIVACY COMMISSIONER OF ONTARIO

**Hon. Consiglio Di Nino:** Honourable senators, Ms. Ann Cavoukian, the Ontario Privacy Commissioner, says that she has been denied an invitation to speak to a forum on biometrics taking place in Ottawa this week and that repeated attempts to contact the Minister of Citizenship and Immigration on the matter have gone unanswered.

Ms. Cavoukian is considered to be the leading expert on the use of iris scans as security identifiers and is credited with being the driving force behind Ontario legislation that protects against the abuse of biometrics.

Minister Coderre has repeatedly said that he would like to have a national debate on the issue of national identification cards. If that is the case, could the Leader of the Government in the Senate tell us why the minister has not seen fit to invite the Ontario Privacy Commissioner to the forum?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I would assume it is because this national forum will have guest speakers from across the nation, all of whom are experts. I do not deny that Ms. Cavoukian probably has expertise in this area, but it would be rare to invite a provincial privacy commissioner to a national meeting.

**Senator Di Nino:** That is an interesting response.

Honourable senators, an accusation made by a member of the other place is that the conference is rigged. I am reading from this morning's *The Globe and Mail*, which states that Mr. Alan Dershowitz, a lawyer and a professor from Harvard University, will be speaking at this conference. He is to be paid \$36,000 to speak, plus expenses. Here we have a local expert, none other than the Privacy Commissioner for the Province of Ontario, who is offering to share her expertise and her concerns with the folks at this forum. Honourable senators, she is concerned about the privacy and security issues at the early stages of the development of this technology.

Therefore I ask the minister: Is it because she is opposed to this kind of technology that the minister has refused her request to speak at this conference?

**Senator Carstairs:** Honourable senators, no.

**Senator Di Nino:** Honourable senators, in its formation, the Senate was created to represent the interests of minorities and the regions. I am here as an Ontario senator. In any discussion of national issues, if there are qualified interested parties in this country, in particular those who hold a public office which is concerned with issues of that specific nature, I would ask the minister to ensure that these people are invited to express their views. Further, I would ask the minister to ask her colleagues in cabinet to invite folks from all parts of our country so that they

may share their experience and expertise with others. Would she assure us that she will do this, please?

**Senator Carstairs:** I would be pleased to take the honourable senators suggestion to cabinet.

[Translation]

**Hon. Pierre Claude Nolin:** Honourable senators, I presume that the Leader of the Government in the Senate does not believe confidentiality to be a purely federal or provincial responsibility.

She will remember, when she was chair of the Standing Senate Committee on Legal and Constitutional Affairs, that at times we invited provincial ministers to appear during consideration of a bill. Unfortunately, they refused our invitations.

A provincial representative intends to take part in a debate that the minister believes should be national. I hope that the leader will pass this message on to cabinet so that the ministers are open to hearing from their provincial colleagues. I hope that she agrees with our colleague's proposal.

[English]

**Senator Carstairs:** Honourable senators, I believe that the individual in question has already put her ideas forward in a public arena. However, as the honourable senator well knows through the operations of the Standing Senate Committee on Legal and Constitutional Affairs, we would not invite a representative of one province or territory without inviting representatives of all of the provinces and territories. It would seem to be only appropriate that her testimony be heard within that dimension.

SOUTH KOREA—TELEVISION SHOPPING CHANNEL—  
SALE OF IMMIGRATION PACKAGES

**Hon. Terry Stratton:** Honourable senators, on August 28, the Hyundai Home Shopping Network in Korea ran a program entitled, Farewell to Korea, which sold three different types of immigration packages to Manitoba. In 90 minutes, almost 1,000 people pledged to buy these packages priced at up to \$33,000 each. The sale was repeated on September 4 and it attracted pledges from almost 3,000 Koreans.

• (1440)

These television programs combined brought in sales of approximately Can. \$82.5 million. These packages were sold through an immigration consulting firm. In truth, this firm was actually selling immigration counselling, but it was conducted under the guise of virtually guaranteed immigration for the buyers.

The program also misrepresented Manitoba's immigration process as it told viewers that the province does not require interviews or English proficiency, when that is not the case.

Is the federal government aware of this sale of immigration packages? If so, is it concerned about the potential for fraud and the message that this activity sends to both terrorists and our allies about how easy it is to enter Canada?



**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I was not aware of the immigration packages. I do not know whether the minister was aware, but I will seek to find out.

The most important thing in what the honourable senator has indicated today is the announcement recently that all of these immigration counsellors must be licensed, because if we do not move in that direction, the honourable senator's tale of what might happen may actually occur.

**Senator Stratton:** Honourable senators, Manitoba Labour Minister Steve Ashton has asked the federal government to move quickly to regulate immigration consultants. Federal Citizenship and Immigration Minister Denis Coderre has said that he is looking into the matter, as the Leader of the Government in the Senate has said. Does she know how quickly this will happen?

**Senator Carstairs:** Honourable senators, no, I do not. I know the department staff is working on the matter, but the time line is still not identified.

**Senator Stratton:** Honourable senators, the immigration consulting firm involved in the incident in Korea is a Korean company with a branch office in Winnipeg. However, the Winnipeg office does not have a telephone listing, and the Manitoba address given on the company's Web site is actually an empty apartment.

The Korean community in Manitoba has indicated that it would like to see an investigation of this company. Could the Leader of the Government in the Senate tell us who would conduct such an investigation?

**Senator Carstairs:** Honourable senators, I do not know. I think it might be a mixed investigation. If we are talking about an application to incorporate in the province of Manitoba, an investigation would be done by the Manitoba government. If we are talking about the broader issue of the regulation of immigration consultants, that obviously would be a federal issue.

What is important here is that someone is not acting in the best interests of the province of Manitoba or, indeed, of the country, and I will take those serious concerns to the Minister of Immigration.

## HUMAN RESOURCES DEVELOPMENT

### EMPLOYMENT INSURANCE— ELIGIBILITY OF FLIGHT ATTENDANTS

**Hon. Edward M. Lawson:** Honourable senators, I received an e-mail today — as did other senators, I am sure — from an Air Canada flight attendant. She writes:

I have been an Air Canada flight attendant for the last 10 years. I have been paying my employment insurance contribution each month, with the anticipated comfort of knowing that if I were to lose my job, I would be eligible for employment insurance payments until I secure alternate employment.

Earlier this year, some regulatory changes occurred and the HRDC suddenly decided that flight attendants were **no longer eligible** to collect Employment Insurance payments, even though we have all been contributing for years and **continue** to make our contributions.

My question has several facets. First, who gave HRDC the right to strip these employees of their legal entitlement to employment insurance benefits?

I would like a written answer to my second question because I want to make it public. What other groups of workers has HRDC stripped of their legal entitlement to employment insurance rights? Surely this development cannot be due to a lack of funding and it cannot be a cutback. We all know that more than the maximum required has been paid by the employers and employees and has been used by the government for other purposes. This is an outrageous event, and I would like to have an answer as to why it has happened, who made it happen, and who is responsible for correcting it immediately.

**Hon. Sharon Carstairs (Leader of the Government):** I thank the Honourable Senator Lawson for his question. There have been no regulatory changes, as far as I know. I will elicit an answer from the department this afternoon to find out whether such changes have been made and whether other individuals are affected, because this is the first time I have heard of such a thing.

## FOREIGN AFFAIRS

### UNITED STATES— CANADIAN CITIZEN DEPORTED TO SYRIA

**Hon. Marcel Prud'homme:** Honourable senators, Mr. Maher Arar is back in Canada.

**Hon. Senators:** Hear, hear!

**Senator Prud'homme:** We all rejoice with his wife. In the days to come, we will learn a lot more about what took place behind the curtain and how many people intervened privately. I thought that someone in the Senate of Canada would jump on this news. After all, the Senate is the protector of minorities and the protector of Canadians. In a way, I am glad that today I was recognized last by Her Honour, even though I was impatient to ask the question.

Mr. Arar, travelling on a Canadian passport, was arrested in New York. He was transferred to a country that I have known for 40 years, Jordan, where he was put in a car and transferred to Syria. Having been in that region quite some time, I know it does not take 12 days to make a transfer by car to Syria, but he was 12 days in Jordan, doing what we do not know. He spent close to a year in a jail in Syria, a jail that reminds me a little bit of some jails in Turkey in the old days.

An inquiry into this matter has been turned down again.

Would the Chairman of the Standing Senate Committee on Foreign Affairs at long last show his leadership and look into this question, as is being done in the House of Commons? I think that the most prestigious Senate committee, on which I am forbidden to sit, is the Foreign Affairs Committee.

Honourable senators, what exactly is going on? All Canadians want to know. As tough as the answers may be, Canadians will not stop asking questions, and rumours will start flying everywhere until we have a real inquiry, as was turned down by the Solicitor General.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I think all of us in this chamber welcome the return of Mr. Arar to Canada, where he has been a citizen for some years.

The government, through the Minister of Foreign Affairs, protested strongly to the United States that if Mr. Arar was to be deported, he should have been deported to Canada, not to Syria. That has already happened.

We do not know the conditions under which Mr. Arar was held because he has chosen not to speak yet, which I think in his circumstances, given the exhaustion he was clearly suffering, is wise. I can assure the honourable senator that when Mr. Arar speaks and whatever actions he chooses to take against the United States and/or Syria will be supported by the Government of Canada.

[Translation]

**Hon. Pierre-Claude Nolin:** Honourable senators, can the Leader of the Government in the Senate tell us what information the Canadian authorities gave the Americans about Mr. Arar?

[English]

**Senator Carstairs:** No, honourable senators, I have no idea what if anything was given to the Americans by the RCMP. This is an internal operational matter with the RCMP.

[Translation]

**Senator Nolin:** If the Leader of the Government in the Senate listened to the same news reports as I did, she would know that the Americans are being quite specific in stating that the police and security forces in Canada — I should say those individuals responsible for security in Canada — informed them of the potential danger posed by Mr. Arar. Is the Leader of the Government aware of this information?

[English]

**Senator Carstairs:** Like the honourable senator, I have read newspaper accounts of what has happened here. However, I will not comment further on RCMP operational matters.

• (1450)

## VISITORS IN THE GALLERY

**The Hon. the Speaker pro tempore:** Honourable senators, I wish to draw your attention to the presence in our gallery of two visitors from the Six Nations, Melba Thomas and Ervin Harris. On behalf of all senators, I welcome you to the Senate of Canada.

Ms. Moore and Mr. Harris are the guests of the Honourable Senator Gill.

[ Senator Prud'homme ]

## ORDERS OF THE DAY

### CRIMINAL CODE

#### BILL TO AMEND—MESSAGE FROM COMMONS— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Robichaud, P.C.:

That, with respect to the House of Commons Message to the Senate dated September 29, 2003 regarding Bill C-10B:

- (i) the Senate do not insist on its amendment numbered 2;
- (ii) the Senate do not insist on its modified version of amendment numbered 3 to which the House of Commons disagreed;
- (iii) the Senate do not insist on its modified version of amendment numbered 4, but it do concur in the amendment made by the House of Commons to amendment numbered 4; and

That a Message be sent to the House of Commons to acquaint that House accordingly.

**Hon. Gérald-A. Beaudoin:** Bill C-10B has come back, honourable senators. This bill has been with us for one and a half years. The other House has accepted two amendments, but disagrees with us on three amendments.

Great interest has been shown in the important objectives of this bill. This bill is unique because we have created, with the other House, a parliamentary precedent, by splitting a bill. That precedent may be useful in the future; only time will tell. I will not dwell on that precise point.

On September 29, 2003, we received a message from the House of Commons with respect to Bill C-10B saying that the House of Commons continued to disagree with the insistence of the Senate on amendment numbered 2 and that it disagreed with Senate amendments numbered 3 and 4.

The House of Commons notes that there is agreement in both Houses on the need for legislation to address cruelty to animals and to continue to recognize reasonable and generally accepted practices involving animals. The other House, however, is convinced that Bill C-10B should be passed in the form it approved it on June 6, 2003.

On October 1, 2003, the Honourable Leader of the Government in the Senate moved:

That, with respect to the House of Commons Message to the Senate dated September 29, 2003 regarding Bill C-10B:



- (i) the Senate do not insist on its amendment numbered 2;
- (ii) the Senate do not insist on its modified version of amendment numbered 3 to which the House of Commons disagreed;
- (iii) the Senate do not insist on its modified version of amendment numbered 4, but it do concur in the amendment made by the House of Commons to amendment numbered 4...

It is on those three items that I wish to express my views.

First, the amendment numbered 2 replaces the words "kills with lawful excuse" with the following words "causes unnecessary death."

[Translation]

In English: "kills an animal without lawful excuse" by "causes unnecessary death".

The House of Commons disagrees, because the word "unnecessarily" would lead to confusion.

[English]

The Senate should continue to insist on its amendment number 2. It is a pure question of the interpretation of law. We discussed that point in the Standing Senate Committee on Legal and Constitutional Affairs and we quoted, in particular, the *Menard* case.

In appeal, Mr. Justice Lamer relied on the criterion of necessity.

[Translation]

Once again, it must be stressed that the means chosen to kill an animal do not cause avoidable pain.

[English]

*Menard* is a very important case in our jurisprudence.

Second, I am of the opinion that the Senate should insist on its modified version of the amendment numbered 3. The modified version creates a defence for traditional Aboriginal practices. More than one witness came before us. The Aboriginal people were heard. It is as a result of that testimony that we arrived at the modified version. Again, this is a question of law and interpretation. We may agree or disagree, but we think that we are right.

Third, the amended version of the amendment numbered 4 relates to the defences in subsection 429(2) of the Criminal Code of Canada, the defences of legal justification. Legal excuse and colour of right is what this is about. The defence of colour of right comes from the common law. We discussed, in French and in English, the common law and the civil law. In French, in the civil law domain, it is referred to as "apparence de droit."

[Translation]

French civil law includes the colour of right. In other words, someone can act in the belief that they have the legitimate right to do so.

[English]

Colour of right is a defence. It may seem mysterious, but it is not. It is a defence.

The other House has rejected our amendments, but the explanation that they give, I regret, does not convince me entirely of their position. We should continue to insist on our version. I suggest that we continue to stand by our amendments.

In conclusion, I suggest that the matter be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

**Hon. George J. Furey:** Honourable senators, we have been engaged in a review of this rather troublesome legislation dealing with animal cruelty since last fall. New animal cruelty legislation has a long history in the House of Commons, dating back to before the 2000 election. The original animal cruelty bill died on the Order Paper at prorogation for the 2000 election. Since that time, the new bill moved through the House of Commons and to the Senate in October 2002.

• (1500)

Senators will recall that it came to this chamber as Bill C-10. The Standing Senate Committee on Legal and Constitutional Affairs, on the instructions of this chamber, split the bill into two parts: Bill C-10A, the firearms bill, and Bill C-10B, the animal cruelty bill. Your committee began its study of Bill C-10B in December 2002. In May 2003, your committee respectfully recommended four amendments to this chamber for adoption. This chamber accepted the reasoning behind those committee recommendations and adopted the amendments. A message was sent back to the House of Commons informing the House of those changes and respectfully seeking their agreement.

The House of Commons considered the message and accepted two small changes to the bill that somewhat met the concerns of this chamber on two of the four relevant matters. In June, a message back to this house stated that the other place did not agree with two of the four recommended amendments. The message was sent to the Standing Senate Committee on Legal and Constitutional Affairs for further consideration and more evidence was heard. The Senate sent the matter back to the other place on June 19, 2003, again requesting the original amendments. We received a message back from the other place dated September 29, 2003.

Honourable senators, I do not believe that the most recent message properly addresses the concerns raised by this chamber. This is most troubling, because the concerns of this chamber were clear and cogent.

I would like to take a few moments to carefully explain to honourable senators how that message from the other place fails to turn its attention to the concerns raised by this chamber.

In part 1 of the message dated September 29, 2003, honourable senators can see that the other house is addressing itself to the killing provision, which I have spoken about on a number of occasions in this chamber. Senators will recall that this chamber decided to remove this offending provision and replace it with words that would have met the alleged desires of the Department of Justice. Honourable senators will recall that the alleged desire of the Department of Justice was to have a provision that dealt with death of an animal, because officials at the Department of Justice thought that the word "injury" did not encompass death. I am at a loss to try to explain their reasoning here, as any rational person would think that the death of an animal would be included in any injury causing such death. However, in the interests of cooperation, we were prepared to appease their concern. Notice now what the other place says in response to our amendment. They state:

This House is of the view that the defence of "without lawful excuse" has been interpreted by the case law as a flexible broad defence that is commonly employed in the Criminal Code of Canada.

Honourable senators, our response to that statement has been consistent, clear and cogent. First, we have stated that, the fact that the phrase "without lawful excuse" is extensively employed in the Criminal Code, does not imply or in any way suggest that the activities that we have before now thought to be legitimate, that is, hunting, culling, and euthanizing animals, will remain legal after this bill.

Second, the placement of the words "without lawful excuse" in the Criminal Code is most often done in cases where the conduct in question is conduct that we aim to prohibit, not conduct that we aim to permit. For example, the possession of obscene material is prohibited as a general theory to which lawful excuse applies as an exception. Failing to blow into a breathalyzer is prohibited conduct, as a general case, with the exception being where there is a lawful excuse. Being in someone else's house without their permission is generally prohibited, except in cases where there is lawful excuse.

Third, in this case the phrase, "without lawful excuse" is preceded by the phrase, "kill an animal." The preceding phrase, "kill an animal," states to the world at large that this is conduct generally prohibited. In some cases, where one has a lawful excuse, the prohibited act will be excused.

The other place then states:

It has been the subject of interpretation by Courts for many years, and is now well understood and fairly and consistently applied by courts...

That is in reference to the phrase, "without lawful excuse." It is true, honourable senators, that courts have long interpreted this phrase, but the other place continues to repeat this without

actually focusing on how the Supreme Court of Canada defined the phrase "without lawful excuse." At the risk of boring senators with a little too much case law, I will take a moment to go over Justice Dickson's definition of this phrase from the Supreme Court of Canada, which is as follows:

"Lawful excuse" is a very general term. It normally includes all of the defences which the common law considers sufficient reason to excuse a person from criminal liability. It can also include excuses specific to particular offences. The word "excuse" is used in this broad meaning in s. 7(3) of the *Criminal Code*, which provides that all common law justifications and excuses continue to be available under the *Code*. This provision has been interpreted to mean that the common law defences are not frozen in time. They can be developed and tailored to fit changes in the law and new offences.

If Parliament does not give some indication that it has assigned a particular meaning to "excuse", the word will be taken to have the same meaning as "excuse" under the common law and in s. 7(3).

That citation can be found in *R v. Holmes* (1988), 41CCC(3d), 50 DLR (4th) 680 (SCC)

Honourable senators, we must carefully look at the words of Justice Dickson. He said that Parliament should give some indication that the phrase has a particular meaning. I ask honourable senators: Has the other place given any indication, expressed or implied, that all our traditional animal hunting activities are lawfully excused? I think not. By the choice of general words of prohibition and no special words of excuse, the other place has led us to Justice Dickson's next sentence. Justice Dickson next says that the phrase will be understood to have its ordinary meaning of common law defences, if there is no legislative indication otherwise.

The message is excessive in its deference to the phrase, "without lawful excuse," but Justice Dickson says it only means that an accident, duress or mistaken fact are implied by that phrase. This is not sufficient to protect or to imply exemption for all the animal activities in which we engage. It is precisely what would be the case if we wanted to prohibit killing animals the way we prohibit killing domestic pets and cattle.

In the third and fourth sentences of Justice Dickson's passage he reiterates to anyone who has not understood that the phrase is of little significance beyond ordinary common law excuses unless Parliament specifically indicates that it has such particular meaning.

If honourable senators can find any indication to tell a judge that this phrase carries particular defences related to our everyday killing of animals, I will gladly accept that this phrase is sufficient protection for such activities. Nowhere, honourable senators, in my humble opinion, will you find such implicit reference to guide a judge.



The Department of Justice attempted to mount the argument before our committee that our traditional animal killing activities are common law rights that will be recognized by the phrase, "without lawful excuse." Your committee was quite puzzled by this idea, since codification in the Criminal Code, of a specific prohibition of a certain activity, such as killing an animal, by definition extinguishes any common law rights to kill animals. If codification in statute did not extinguish former common law rights, how would we prohibit any activity that hitherto was legal, such as the possession of certain types of pornography or hate literature? The words of section 8(3) of the Criminal Code support your committee's views on this. Section 8(3) of the Criminal Code specifically saves common law defences, except where they are inconsistent with the code.

• (1510)

However, introducing a general prohibition using the words "it is prohibited to wilfully kill an animal," makes the prior common law right to kill an animal inconsistent with the code.

The message next says:

This defence has a long-standing presence in the Criminal Code, including being available since 1953 for the offence of killing animals that are kept for a lawful purpose.

The fact that the other place would use the prohibition against killing domestic pets as a justification for section 182.2(1)(c) suggests to me that they either do not understand or they refuse to address the distinction between domestic animals and wild animals.

We all want a general prohibition against killing domestic animals. No one wants a general prohibition against killing wild animals. To use the same words for both actions betrays the fact that the other place does not see any difference between the two types of animals.

Older legislators were wise to restrict the Criminal Code provisions to domestic animals and cattle. All honourable senators and members of the other place should remember that it is already an offence to kill a wild animal using unnecessary pain, but it has never been an offence simply to kill a wild animal such as in a regulated provincial hunt.

The next part of the message says:

There are no authorities that suggest that this defence (of lawful excuse) is unclear or does not cover the range of situations to which it is meant to apply.

Again, honourable senators, I cite the case of *R. v. Jorgensen*, a Supreme Court of Canada authority. This is a case where the owner of a video store obtained an Ontario censor board approval to stock a specific adult movie on his shelf. The board watched the movie and issued the approval, stating that this movie did not offend community standards of tolerance. The police were of a different mind, so they charged Jorgensen with

possession of obscene material. This provision of the Criminal Code prohibits the possession of obscene material without a lawful excuse. Jorgensen showed the court his provincial permit, and the court convicted him.

Justice Sopinka of the Supreme Court of Canada had this to say about it:

Two propositions which are somewhat related militate against the submission that the OFRB approval [i.e. the provincial permit] can constitute a lawful justification or excuse. First, one level of government cannot delegate its legislative powers to another. Second, approval by a provincial body cannot as a matter of constitutional law preclude the prosecution of a charge under the Criminal Code.

I find it puzzling, honourable senators, that the Department of Justice had not considered this case before dealing with the bill; and I find it more puzzling that the message back from the other place studiously avoids this case.

The importance of this case is that all the provincial hunting permits that exist across the country are the equivalent to Jorgensen's provincial censor board permit. Provincial permits are not lawful excuses for committing federal criminal offences.

**The Hon. the Speaker *pro tempore*:** Honourable senators, I must advise the Honourable Senator Furey that his time has expired. Is leave granted to allow the senator to continue?

**Hon. Senators:** Agreed.

**Senator Furey:** We know that the Department of Justice is aware of this issue because several years ago provinces came to Ottawa asking for Criminal Code exemptions for their provincial lottery permits that they knew, after Jorgensen, would not be sufficient defences in the Criminal Code. The other place was not studiously indifferent to Jorgensen in that case. Why did it choose to be studiously indifferent in this case?

The next paragraph of the message from the other place does its best to repeat the statement of the Department of Justice when they appeared before your committee. The third paragraph on the first page of the message is devoted to explaining how the Senate amendment to the killing provision is confusing and incoherent.

Senators should know that your committee's first impulse was to eliminate the killing provision altogether. We were of the initial view that the Department of Justice had made a mistake in expanding the killing of animals from domestic animals and cattle to all animals. Virtually the only stated reason that the Department of Justice had for including this offensive provision in the bill was that the Department of Justice did not think that causing unnecessary pain, suffering or injury to an animal included causing the death of an animal. While your committee thought this reasoning was weak, in the spirit of compromise, we laboured to include the word "death" in the prohibition so that the department's unjustified worry could be appeased.

The message back demonstrates the old saying that no good deed goes unpunished.

Honourable senators should note that the courts have developed a clear understanding of the present code. The other place now accuses us of confusing the old understanding with our amendment. My view is that the other place introduced a revolution into the code with section 182.2(1)(c), while all the time suggesting that these were merely housekeeping amendments, not to be worried about. Their only intent was to increase the penalties for people who were abusing animals, something we all wanted. I am not sure it is fair for them to now turn around and accuse the Senate of confusion because we are trying to temper the most blatant errors in the bill.

The other House supports their accusation of confusion by saying:

It has been the law for many decades that persons who kill an animal without lawful excuse are guilty of an offence.

This, honourable senators, is a profound misstatement of the Criminal Code. It has been the law for many decades that persons who kill a domestic animal without lawful excuse are guilty of an offence. I have already suggested to this honourable house why the distinction between domestic and wild animals has always been important. This second failure on the part of the other place to recognize the distinction reinforces my worry that they do not see the real issue. The message back to us that demonstrates a failure and deep misunderstanding of the main issue is an indication that more work must be done.

Honourable senators, the next aspect of the message that was troublesome was the quote:

To collapse the elements of these two different offences into one will invite a reinterpretation of the well-developed test of "unnecessary" and will add confusion rather than clarity to the law.

To hear this from the other place is akin to hearing your neighbour accuse you of disturbing the peace when you catch him setting your house ablaze and you yell "fire." It was the other place that put this legislation before us. It was they who drafted it. We merely pointed out its defects and offered possible solutions to those defects. Our initial course would have been to eliminate the offending section without any additional wording, so we are twice damned for good intentions.

The message from the other place then turns to our proposed Aboriginal amendments. Senators will recall that because of the existence of the killing provision discussed above, your committee, seeing the implications of this expanding prohibition on killing, saw implications for our native peoples. We addressed this by introducing a provision that would prompt courts to take particular account of the fact that part of our heritage includes the traditional practices of our native peoples. This is more than saying that they may kill using the least painful means. Rather, this provision suggests that the traditional methods of hunting are

important to respect. To this message, the other place stated: "Aboriginal practices that do not cause unnecessary pain are not currently offences and will not become offences under this bill." Once again, the message indicates that the other place does not understand the intent of the provision.

• (1520)

In a future case, a judge will arrive at the choice of whether a degree of pain was necessary or unnecessary, much as former Justice Lamer did in *Menard* when he arrived at the decision that the two-minute carbon monoxide inhalation was unnecessary. The judge will assess whether there is a less painful method of causing death on the market and, if there is, then the accused's method will be measured against the ideal method. If the accused's method adds, for example, 30 seconds of unnecessary pain to the death of an animal, there is reason to believe that a conviction could follow.

It is easy, therefore, for the other place to wisely restrict their statement to the Aboriginal practices of Aboriginal people that do not cause unnecessary pain. Everyone knows that the litmus test for unnecessary pain rises with every innovation. By a simple process of comparison similar to *Menard*, traditional practices may indeed come under attack. The addition of the clause recognizing the legitimacy of the traditional practice signals to judges that this category of activity has special significance and cannot be measured against the latest techniques for killing that exist in the marketplace.

This is the first reason that the Aboriginal provision was important; and the House message conveniently avoided addressing it. The second reason that the Aboriginal provision was necessary was a direct response to the expanded killing provision in proposed section 182.2(1)(c) of the bill.

I congratulate Senator Carstairs on her initiative to have this whole issue of non-derogation clauses dealt with as a whole, and not piecemeal. Hopefully, at some time in the immediate future, we can move to that because it is, honourable senators, a more sensible and more logical solution to this whole problem.

Honourable senators, the message of the other place turns next to the question of colour of right. Senators should note that following our previous message to the other place, the other place accepted a version of the colour of right defence. Your committee thought that version to be unnecessarily ambiguous when clear words were available and there was no reason not to use clear words. For whatever reason, the other place insisted on ambiguous words and we sent the message back in June 2003 indicating that we thought clear words were preferable. The other place has since sent back the message with their reasoning attached. Of course, the reason does not address why we cannot simply add the provision, colour of right, as a defence in this proposed section. The message refuses to address itself to the clear words of Justice Stevenson of the Supreme Court of Canada in *R. v. Jones and Pamajewon*, which states that colour of right needs to be embraced "within the definition" of an offence in order to be an effective defence.



Honourable senators, we have reached a crossroads with this legislation. It is not the end of the road; it is not the edge of the legislative abyss; and it is not a case of do or die.

As I stated earlier, we must strive to ensure that the good aspects of this bill are preserved and passed into law, as many Canadians desire. Constitutionally, there is nothing to prevent this chamber from referring this bill back to the other place, which has refused to answer our concerns. Perhaps if they took time to address our concerns, and not just simply ignore them, this chamber could possibly agree to disagree and move this important legislation forward.

Honourable senators may well think that these issues are unclear and complex and, therefore, may be hesitant to take action. In the 1800s the great French writer Stendhal said that there is only one rule: "style cannot be too clear, too simple..." The influential British jurist, Lord Johan Steyn, adopted these words on many occasions.

I put it to you, honourable senators, that if you find that the proposed changes to the Criminal Code brought about by section 182.2(1)(c) are unclear and not simple, then it is an indictment of this part of the code. The Criminal Code affects lives and its operating spirit should be clarity and simplicity.

Honourable senators should ask themselves, Is this what the killing provision of Bill C-10B does? If senators do not think so, then they should think long and hard about returning this bill yet again to that other place. Thank you, honourable senators.

**Hon. John G. Bryden:** Does the act of hunting for sport — not for food — to show how good a shot you are if you are a wing shooter with ducks and geese, or to show how good a trapper you are if you are hunting whitetail bucks — constitute lawful excuse for that activity that is carried out by tens if not hundreds of thousands of North Americans and that generates a considerable income level for numbers of outfitters?

**Senator Furey:** I thank the honourable senator for his question. Presently, the provincial regimes set up with licensing parameters constitute lawful excuse. However, there is nothing in the Criminal Code preventing you from killing a wild animal. You are only not permitted to do it if you cause unnecessary pain. However, if this proposed legislation becomes law, will a provincial licence be a lawful excuse? There is a large question in the minds of committee members that, because of *R. v. Jorgensen*, it will not provide lawful excuse.

**Senator Bryden:** There was a question at one point during our committee hearings that the Department of Justice would consider a definition of "lawful excuse" in relation to that particular provision, which is new to the Criminal Code. Did they do that? Did we dismiss it? Is such a definition available from the Department of Justice?

**Senator Furey:** Honourable senators, I believe that it is quite possible to clearly define "lawful excuse" or to use the kind of

regime that I referred to with respect to gambling and lotteries, whereby a national exemption for provincial hunting licences could be included in provisions of the code.

[Translation]

**Hon. Aurélien Gill:** Honourable senators, Senator Furey supported Senator Carstairs' initiative to request that exemption clauses be considered, in order to allow the First Nations to exercise certain rights and not to see these rights threatened every time a bill is proposed.

We do not know when the House will adjourn. It seems that the committee has to report to it by December. Honourable senators, would it be possible to examine this issue before December 31, in order to allow the application of this exemption clause?

[English]

**Senator Furey:** Honourable senators, I am not exactly sure what the timelines would be, but I will repeat this again: The initiative espoused by Senator Carstairs is a good one. It would take care of trying to deal piecemeal with these non-derogation clauses and with every piece of legislation that comes before the chamber.

• (1530)

Presently, some honourable senator has the adjournment of this matter. The Standing Senate Committee on Legal and Constitutional Affairs is waiting to receive it. We would gladly receive it at any time and move on it as quickly as possible.

**Hon. Charlie Watt:** Honourable senators I would like to adjourn the debate under my name and speak to this item tomorrow.

**Hon. Herbert O. Sparrow:** Honourable senators, I have a question for the chairman of the committee before the adjournment motion is put. Is the honourable senator recommending that the issue be referred back to committee? Further, is the honourable senator suggesting that the resolution put forward by the minister of the government in this chamber be voted down; that is, that this chamber not accept it?

**Senator Furey:** Honourable senators, I made no reference to sending the matter back to committee and I made no reference to the comments made by the Leader of the Government in the Senate with respect to what to do with it. I merely asked honourable senators to listen carefully to what I had to say and evaluate it. If you came to the conclusion that I came to, then you would want to think long and hard about sending it back to that other place yet again. What vehicle you use to do that, or how you do it — whether by going back to committee or by debating it here in the chamber and then voting on it — I am in your hands.

**Hon. Anne C. Cools:** Honourable senators, might I join the debate? First, I would like to thank Senator Furey for what I thought was an excellent and lucid speech. It was very clear minded.

As I look at the question, and as I look at the issues, the fundamental problem here is a disagreement between the House of Commons and the Senate. The fact of the matter is that the issues on which the two chambers have disagreed have been crystallized and have been identified very clearly. The problem is that neither the House of Commons nor the Minister of Justice will talk to us.

I listened with care to Senator Furey's remarks. Senator Furey did not speak about the minister in the speech; he kept talking about the Department of Justice. Could Senator Furey share with us how we, as the Senate, should deal with such a disagreement?

**Senator Furey:** Honourable senators, I really have no further comment to make. I know the Honourable Senator Cools suggested at one of our last sessions a two-House conference as she proceeded to explain some of the finer points of that process. I merely ask today that honourable senators examine their conscience with respect to some of the issues that I have raised. If you feel that it is a matter that is not clear or precise, then I urge you to think long and hard about sending it back to that other place yet again.

On motion of Senator Watt, debate adjourned.

[Translation]

## BUSINESS OF THE SENATE

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I would now like us to address Item No. 4 under Government Business, and then resume the order set out on the Order Paper.

[English]

## PARLIAMENT OF CANADA ACT

### BILL TO AMEND—SECOND READING— DEBATE ADJOURNED

**Hon. Sharon Carstairs (Leader of the Government)** moved the second reading of Bill C-34, to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence.

She said: Honourable senators, it is a pleasure to rise to speak today to Bill C-34, the proposed amendments to the Parliament of Canada Act to establish an ethics commissioner and a separate Senate ethics officer.

Honourable senators, this initiative has a long history. The question of regulating the conduct of parliamentarians in matters of possible conflicts of interest has been debated by

parliamentarians for over 30 years. In 1973, the Honourable Allan J. MacEachen, then President of the Privy Council, presented a green paper on members of Parliament and conflict of interest. That paper proposed an independence of Parliament act that would have addressed issues of conflict of interest among parliamentarians. However, it was not only Liberal governments that proposed a statutory framework to regulate the conduct of parliamentarians. The Conservative government of the Right Honourable Brian Mulroney proposed several bills that would have established in statute elaborate regimes for parliamentarians with a registrar of interests, a three-member conflict of interest commission, an extensive disclosure regime and detailed rules of conduct, all set out in statute.

The issue has been studied extensively by several parliamentary committees. More than 10 years ago, a special joint committee was formed under the co-chairmanship of our former colleague the Honourable Dick Stanbury from the Senate and Don Blenkarn, then Member of Parliament for Mississauga South. That all-party committee spent several months conducting detailed studies of the issue and then presented a unanimous report. They proposed a detailed code of conduct with an independent adviser to oversee disclosure by parliamentarians, advise parliamentarians of their obligations, and also to investigate alleged breaches.

That code, including the office of the independent adviser, would have been established right in the Parliament of Canada Act. That committee, by the way, included a number of our colleagues, including Senators Oliver, De Bané, Callbeck and Prud'homme. The latter two were then members of the other place. We owe them a debt of gratitude as their report laid the groundwork for subsequent proposals, including the one before us today.

Senator Oliver then took up the torch, if you will, six years ago, when he co-chaired a special joint committee on conflict of interest with Peter Milliken of the other place. That committee reported in March of 1997. The regime they recommended was similar to that proposed by the Stanbury-Blenkarn one, also with a detailed code of conduct and an independent adviser to oversee parliamentarians' disclosure and other obligations. They, however, recommended using the rules of each House to establish the respective codes of conduct rather than the Parliament of Canada Act.

Honourable senators, on October 23, almost one year ago, the government tabled a proposed draft bill to amend the Parliament of Canada Act to establish the office of an independent ethics commissioner, proposing amendments to the *Rules of the Senate* and the *Standing Orders of the House of Commons* in order to implement the recommendations of the 1997 Oliver-Milliken special joint committee on a code of conduct. These proposals were tabled at that early stage as draft documents in both Houses to enable all parliamentarians the earliest possible opportunity to study them and to provide the government with their views at the earliest opportunity.



• (1540)

The Standing Committee on Rules, Procedures and the Rights of Parliament, ably chaired by Senator Milne, with Senator Andreychuk assisting as deputy chair, studied the proposals. On April 10, 2003, the committee deposited with the Clerk of the Senate its eighth report — an interim report on the ethics package intended specifically to provide the government with a committee's advice as the government prepared to introduce the bill that would amend the Parliament of Canada Act.

The bill before us represents the culmination of all these efforts over all these years. The government listened closely to the views expressed by parliamentarians in both Houses. A number of significant changes were made to the original proposal to reflect the views received. Indeed, I am pleased to report that every specific recommendation of the Senate committee has been implemented in the bill, every single recommendation. Once again, members of this chamber can take pride in knowing that they have had an important and substantial impact.

I want to tell honourable senators what Bill C-34 would and would not do. First, it would not establish a code of conduct to govern senators. The government proposes in this bill that each House of Parliament establish such a code of conduct. In other words, the House of Commons and the Senate would put their own code of conduct into place through their respective standing rules. In that way, each chamber remains in control of its members and all matters related thereto.

This is consistent with the interim report of the Standing Committee on Rules, Procedures and the Rights of Parliament, which included as one of its key areas of agreement that the rules of conduct, including those currently in place, shall be incorporated into the *Rules of the Senate* following a detailed study. This is made explicit in Bill C-34, which states in proposed subsection 20.5(1):

The Senate Ethics Officer shall perform the duties and functions assigned by the Senate for governing the conduct of members of the Senate when carrying out the duties and functions of their office as members of the Senate.

Bill C-34 would amend the Parliament of Canada Act to provide for the appointment of an independent Senate ethics officer for members of the Senate, and an independent ethics commissioner for public office holders and members of the other place.

Honourable senators, this is possibly the most significant change from the original bill because that bill proposed by the government wanted, of course, to have only one ethics officer, and it was made in direct response to the advice received from the Standing Committee on Rules, Procedures and the Rights of Parliament. The standing committee disagreed with this approach of having one officer and proposed the establishment of a separate Senate ethics officer. Honourable senators, the government listened and Bill C-34 would implement this recommendation.

Members of the other place did not share the concerns expressed. They had no objection to appointing a single ethics commissioner to oversee their members and public office holders, and this is also reflected in the bill before us. I know that some honourable senators questioned that approach, but I am sure we all respect the right of members of the other place to choose their own path, as we have chosen ours.

Another important recommendation of the Senate standing committee related to the method of appointment of the Senate ethics officer. There was some concern that the original appointment process, set out in the government's proposed amendments draft bill, did not provide for meaningful input from the parliamentarians who would be guided by this person. The original proposal provided only that the Governor in Council would appoint the ethics commissioner. The government heard the concerns expressed. Bill C-34 now provides that the Governor in Council shall appoint a Senate ethics officer, after consultation with the leader of every recognized party in the Senate, and after approval of the appointment by a resolution of the Senate.

The committee objected to the proposed term of office of five years — non-renewable — set out in the original proposal. Members of the committee expressed concern that a five-year term was tied to the electoral cycle, which is not relevant to members of this chamber. Concern was also expressed that a five-year non-renewable term would not allow sufficient time for the officer to acquire and then benefit from accumulated expertise. The committee proposed instead a seven-year term of office. Once again, the government listened to the concerns expressed. Bill C-34 provides that the Senate ethics officer holds office during good behaviour for a term of seven years.

The bill provides for the reappointment of the officer for one or more terms. For reappointment, the same procedure would apply as for the original appointment; namely, require consultation with the leader of every recognized party in the Senate, and also approval by a resolution in the Senate.

Honourable senators, the committee had not pronounced itself on the question of renewability of the term. The bill therefore allows the Senate itself to make the decision at the time, and based upon the experience and circumstances of the time whether or not to reappoint a particular person to the position.

Honourable senators, the Standing Committee on Rules, Procedures and the Rights of Parliament was not able to reach a consensus on how the Senate ethics officer should be appointed at the time of its interim report to this chamber: created by statute or pursuant to the *Rules of the Senate*. In my speech of May 1 in this chamber I spoke at length answering the concerns raised about a statutory appointment process. I detailed the various authorities, both from the leading treatises and Canadian case law, to explain why the government believes that a statutory appointment process would not, as has been suggested by some, create a significant risk of judicial intervention in the activities of the Senate or undermine parliamentary privilege.

Just as the fact that our Clerk of the Senate is appointed by the Governor in Council pursuant to a statute — the Public Services Employment Act — has never invited judicial intervention in our affairs or undermined parliamentary privilege, so can the Senate ethics officer be appointed pursuant to the Parliament of Canada Act without increasing that risk.

Honourable senators, I do not propose to repeat what I said on May 1. The members of the other place have agreed with the government proposals that the ethics commissioner who will oversee their obligations under their code of conduct be established in the standing rules, and also the obligations of public office holders will be appointed pursuant to statute, namely, the Parliament of Canada Act, as provided in Bill C-34. The government believes, and clearly the members of the other place agree, that this is the best way to ensure that the ethics commissioner is independent and seen by the Canadian public to be independent.

Honourable senators, we in this chamber deserve no less and Canadians rightfully expect no less from us. With a defined term tenure and set grounds for early removal established in a statute that cannot be quickly or quietly changed, we tell Canadians and the Senate ethics officer that the position is not vulnerable. The person holding the position would not need even to contemplate that if he or she were to give unwelcome advice then he or she could be expeditiously removed. We may know that members of this chamber would never do such a thing, but it is critical that the Canadian public see concretely that the holder of the position could not even be subjected to arbitrary dismissal.

As Senator Rompkey said in this chamber on May 8, and Senator Fraser said on May 13, it is not good enough to say, "Trust me, we would not act like that." Canadians expect more and they deserve more. The Parliament of Canada Act is one of our most fundamental statutes. Indeed it confirms parliamentary privilege — itself guaranteed by section 18 of the Constitution Act, 1982. This is the appropriate place to establish this important position.

Before concluding I want to point honourable senators to several important provisions in Bill C-34. First, there are several provisions included for greater certainty to clearly establish that privilege attaches to the activities of the Senate ethics officer and is found in proposed section 20.5(2) providing explicitly:

The duties and functions of the Senate Ethics Officer are carried out within the institution of the Senate. The Senate Ethics Officer enjoys the privileges and immunities of the Senate and its members when carrying out those duties and functions.

This wording is directly responsive to concerns expressed by the Senate Law Clerk and Parliamentary Counsel when he appeared

before the Standing Committee on Rules, Procedures and the Rights of Parliament. The bill includes additional safeguards provisions. For example, proposed subsection 20.5(5) states:

For greater certainty, this section shall not be interpreted as limiting in any way the powers, privileges, rights and immunities of the Senate or its members.

• (1550)

An issue that has also been raised by some senators concerns whether the proposed Senate ethics officer could be compelled to testify and reveal any information disclosed confidentially to him or her by a senator. Proposed section 20.6 provides the following:

(1) The Senate Ethics Officer, or any person acting on behalf or under the direction of the Senate Ethics Officer, is not a competent or compellable witness in respect of any matter coming to his or her knowledge as a result of exercising any powers or performing any duties or functions of the Senate Ethics Officer under this Act.

(2) No criminal or civil proceedings lie against the Senate Ethics Officer, or any person acting on behalf or under the direction of the Senate Ethics Officer, for anything done, reported or said in good faith in the exercise or purported exercise of any power, or the performance or purported performance of any duty or function, of the Senate Ethics Officer under this Act.

(3) The protection provided under subsections (1) and (2) does not limit any powers, privileges, rights and immunities that the Senate Ethics Officer may otherwise enjoy.

In addition, clause 38 of the bill would amend the Federal Courts Act to further protect the Senate ethics officer against the possibility that her or his actions might be subject to judicial scrutiny by the Federal Court.

All of these provisions, honourable senators, ensure that the Senate will remain the master of its own internal affairs, including the imposition and enforcement of a code of conduct or conflict of interest code, and that the Senate's privileges will be fully protected.

Honourable senators, we in this chamber carry a weight of responsibility to the Canadian public that is, in my view, arguably heavier than that borne by our colleagues in the other place. Like them, we serve in the Parliament of Canada to further the public interest; however, unlike them, we do not return to the Canadian electorate every several years for renewal of their confidence in our performance and acquittal of our responsibilities here. We are responsible ourselves to ensure that we maintain the high standards of conduct that Canadians expect and deserve.



The person to whom we will turn for advice and to whom we will entrust to oversee our obligations must be someone in whom we, on both sides of this chamber, have the utmost confidence, and he or she must be someone in whom Canadians have the utmost confidence.

The government has prepared Bill C-34 with a careful view to the concerns expressed over the past many years by parliamentarians from this chamber and the other place. Members of the other place have agreed that their ethics commissioner should be appointed pursuant to the Parliament of Canada Act. I believe that the position of the Senate ethics officer must similarly be established in that act.

On motion of Senator Kinsella, for Senator Oliver, debate adjourned.

**PUBLIC SERVICE MODERNIZATION BILL**

**THIRD READING—MOTION IN AMENDMENT—  
DEBATE CONTINUED**

On the Order:

Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Harb, for the third reading of Bill C-25, to modernize employment and labour relations in the public service and to amend the Financial Administration Act and the Canadian Centre for Management Development Act and to make consequential amendments to other Acts,

And on the motion in amendment of the Honourable Senator Beaudoin, seconded by the Honourable Senator Comeau, that the Bill be not now read a third time but that it be amended in clause 12, on page 126, by replacing lines 8 to 12 with the following:

**“30. (1)** Appointments by the Commission to or from within the public service shall be free from political influence and shall be made on the basis of merit by competition or by such other process of personnel selection designed to establish the relative merit of candidates as the Commission considers is in the best interests of the public service.

(1.1) Despite subsection (1), an appointment may be made on the basis of individual merit in the circumstances prescribed by the regulations of the Commission.

(2) An appointment is made on the basis of individual”,

And on the subamendment of the Honourable Senator Kinsella, seconded by the Honourable Senator Stratton, that the motion in amendment be amended:

(a) by replacing the words “by replacing lines 8 to 12” with the following:

“(a) by replacing lines 8 to 11”; and

(b) by replacing the words “(2) An appointment is made on the basis of individual” with the following:

“(b) by replacing lines 26 to 29, with the following:

“may be identified by the deputy head,

(iii) any current or future needs of the organization that may be identified by the deputy head, and

(iv) achieving equality in the workplace to correct the conditions of disadvantage in employment experienced by persons belonging to a designated group within the meaning of section 3 of the *Employment Equity Act*, so that the employer’s workforce reflects their representation in the Canadian workforce.”.

**The Hon. the Speaker pro tempore:** Are honourable senators ready for the question on the sub-amendment?

**Hon. Senators:** Question!

**The Hon. the Speaker pro tempore:** Is it your pleasure, honourable senators to adopt the sub-amendment?

**Some Hon. Senators:** No.

**Some Hon. Senators:** Yes.

**The Hon. the Speaker pro tempore:** Will all those in favour of the sub-amendment please say “yea”?

**Some Hon. Senators:** Yea.

**The Hon. the Speaker pro tempore:** Will all those opposed to the sub-amendment please say “nay”?

**Some Hon. Senators:** Nay.

**The Hon. the Speaker pro tempore:** In my opinion the “nays” have it.

*And two honourable senators having risen:*

**The Hon. the Speaker pro tempore:** Call in the senators.

**Hon. Terry Stratton:** Honourable senators, I would like to defer the vote until tomorrow at 3:30 p.m. with the bells at three o’clock.

I have concurrence of the whip on the other side for a 3:30 p.m. vote with the bells to ring 3 p.m.

**Hon. B. Alasdair Graham:** Honourable senators, as part of my official duties as the acting chief government whip, we concur on this side to the suggestion of the Honourable Senator Stratton.

**The Hon. the Speaker pro tempore:** It is suggested that the vote will take place at 3:30 p.m. tomorrow afternoon, and the bells will ring at 3 p.m. Is it agreed, honourable senators?

**Hon. Senators:** Agreed.

Vote deferred.

## ANTARCTIC ENVIRONMENTAL PROTECTION BILL

## THIRD READING

On the Order:

Resuming debate on the motion of the Honourable Senator Christensen, seconded by the Honourable Senator Léger, for the third reading of Bill C-42, respecting the protection of the Antarctic Environment.

**The Hon. the Speaker pro tempore:** Is the house ready for the question?

**Hon. Senators:** Question!

**The Hon. the Speaker pro tempore:** Is it your pleasure, honourable senators, to adopt the motion?

Motion agreed to and bill read third time and passed.

## LEGAL AND CONSTITUTIONAL AFFAIRS

COMMITTEE AUTHORIZED TO STUDY INCLUDING  
IN LEGISLATION NON-DEROGATION CLAUSES  
RELATING TO ABORIGINAL TREATY RIGHTS

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Robichaud, P.C.:

That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report on the implications of including, in legislation, non-derogation clauses relating to existing aboriginal and treaty rights of the aboriginal peoples of Canada under s. 35 of the *Constitution Act, 1982*; and

That the Committee present its report no later than December 31, 2003.

**Hon. Anne C. Cools:** Honourable senators, I think there has been a mistake or a misunderstanding. I have been informed that some senators have been led to believe that somehow or other I am holding the adjournment on this item, when, in point of fact, that is not the case. I had yielded the floor to another senator some time ago. The senator has obviously not chosen to act. I have no objections to this motion and I am very supportive of this initiative. Perhaps the question should be put.

**The Hon. the Speaker pro tempore:** Is the house ready for the question?

**Hon. Senators:** Question!

**The Hon. the Speaker pro tempore:** Is it your pleasure, honourable senators, to adopt the motion?

Motion agreed to.

[Translation]

## COPYRIGHT ACT

## BILL TO AMEND—SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Gill, for the second reading of Bill S-20, An Act to amend the Copyright Act.—(Honourable Senator Nolin).

• (1600)

**Hon. Pierre Claude Nolin:** Honourable senators, allow me to say from the outset that I support this motion. I have a few questions and I presume that the committee that is going to examine this measure will find the answers.

I want to impress upon you, if need be, the importance of protecting intellectual property. Our Western societies have recognized these rights as important and amply and adequately recognized the existence of these rights in the economic architecture of our societies.

Let me give a small example to demonstrate how important and valuable intellectual property is. Further examples of the theory I wish to explain are available on the Internet. I will not quote figures, but the math is quite simple. If you take the book value of a company like Coca-Cola and compare it to the number of outstanding shares of the company and the stock market value of each share this afternoon, you will notice a very significant difference, to the tune of \$70 billion in fact, which accounts, to a large extent, for the value of the company's intellectual property. It is difficult to assign a set value. You might tell me that the number of customers accounts for this difference, and you would be right. The fact is that the company's intellectual property accounts for this difference. See how important recognizing and protecting these rights is economically.

Some honourable senators may have encountered in the past counterparts from countries I describe as emerging democracies, mainly Eastern European countries. One of their main problems was the recognition of intellectual rights since these are private rights. The individual or the company is recognized as the owner of these rights. The expanding global economy prompted the recognition of this notion, but many have had a hard time understanding the notion of private ownership of intellectual rights and giving it value. It was time they did, because many valuable contributors to their economies were leaving their country for others where intellectual property is recognized.



I support this bill, which extends the recognition of intellectual property to photographers and their work. I have one small concern, and I think I am not alone. I wonder what happens to the right of the photographer when he or she takes a picture of a work that is already copyrighted. We can think of a work of art or a painting. There are conflicting intellectual property rights. I am convinced that the committee will find an answer. There is a way of dealing with these rights and their recognition. Besides that, this is a very worthwhile bill. I urge you to give second reading to the bill so that it can be referred to committee.

**The Hon. the Speaker pro tempore:** Is it your pleasure, honourable senators, to adopt the motion?

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

**The Hon. the Speaker pro tempore:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Robichaud, bill referred to Senate Standing Committee on Banking, Trade and Commerce.

[English]

## USER FEES BILL

### SECOND READING—DEBATE ADJOURNED

**Hon. Peter A. Stollery** moved the second reading of Bill C-212, respecting user fees.

He said: Honourable senators, when I first saw Bill C-212, which concerns user fees and a form of dedicated tax, naturally, as other honourable senators would, I thought of Bill C-56, the anti-smoking bill that we sent to the House of Commons at least twice. I remember the arguments that were used against it, which were, as everyone will remember, that the levy proposed in Bill C-56 was a dedicated tax and that the government would not accept a dedicated tax. Senator Kenny was our main protagonist in that matter, and I thought of his difficulties when Mr. Cullen, whose bill this is, spoke to me about Bill C-212.

• (1610)

Bill C-212 provides for parliamentary scrutiny and approval of user fees set by regulatory authorities and involves an enormous number of programs. This was quite a big issue in the 1970s. However, as I read the material, I learned that user fees go back a long time. There is no real control over them by Parliament. I view a user fee to be a dedicated tax. The money is collected for a specific purpose and it goes into the general revenue fund. By many people's definition, that would qualify as a form of a tax. That leads me to ask: What was wrong with the levy? I do not wish to return to that argument that we all heard here for so long, but this bill certainly made me think of that levy and to wonder what was wrong with it.

Honourable senators, I will not take up a significant amount of time on this matter. This is a short bill. It requires that the authorities go before Parliament and justify the user fee and, when the user fee changes, which apparently it does quite a bit, that the industries paying it shall be consulted. In other words, it brings more transparency into the user fee setting. It also allows

people whose industries are affected by it to make their case one way or another.

Honourable senators, there is an enormous amount of public support for this bill. It seems to me that the proper place for this bill is in committee. I do not see any reason or need for me to discuss it further, because it is not a very complicated proposition.

Honourable senators, I support the bill. I am sponsoring the bill in the Senate. I hope that honourable senators will see fit to quickly send this bill to committee, where the issues can be aired properly.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, would the honourable senator take a question for clarification?

**Senator Stollery:** Certainly.

**Senator Kinsella:** Could the honourable senator tell us whether or not this bill affects money raising in any way?

**Senator Stollery:** Honourable senators, money raising certainly would be affected.

I forgot to mention, honourable senators, that this bill was passed unanimously in the House of Commons. I believe it was passed on a voice vote and there was no opposition. However, if I am wrong, I stand to be corrected.

User fees account for a percentage of revenue. The question is one of semantics, as to whether or not a user fee is a tax. The best place to discuss that subject is in committee.

**Senator Kinsella:** Would honourable senators be correct in understanding that the fees that are collected by the application of this proposed legislation will end up in the Consolidated Revenue Fund?

**Senator Stollery:** Honourable senators, that is as I understand the process.

**Senator Kinsella:** I notice that clause 10 of the bill would amend the Financial Administration Act by adding a new section 19.4, which provides:

The power to make a regulation under section 19 or 19.1 that fixes, increases, or decreases or alters the application of a user fee...

Therefore, it would appear in principle that this bill is very much about the methodology of raising funds.

My question to the honourable senator is: Has he reflected upon whether or not this bill requires Royal Recommendation?

**Senator Stollery:** Honourable senators, I have not given thought to whether or not the bill requires Royal Recommendation. This returns to the semantics of whether a user fee is a fee-for-service and is, therefore, not actually a tax in legal terms. If it is not a tax in legal terms, it is a fee-for-service. I am not certain that requires Royal Recommendation, but my suggestion would be that the best person to discuss that with is Mr. Cullen, and I would suggest that the committee call Mr. Cullen as a witness and ask him that question.

**Senator Kinsella:** Does the honourable senator recalls the Senate bill that was introduced by our colleague, Senator Kenny, in the last Parliament, dealing with an innovative, creative idea to raise funds to combat the danger of smoking? That bill did not succeed because the Royal Recommendation, it was argued, was necessary. Would the honourable senator inform us whether this is a private member's bill?

**Senator Stollery:** Yes, this is a private member's bill.

**Senator Kinsella:** It is my understanding that the government in the other place did not support this bill. Would the honourable senator clarify that for us?

**Senator Stollery:** I mentioned Senator Kenny's bill at the outset because, as Senator Kinsella points out, it obviously jumps right out at one. In that instance, the decision was made by a Speaker's ruling. Honourable senators should remember that the matter went to the Speaker of the House of Commons. I am certain there were elements of Senator Kenny's bill that the government did not like and this chamber did like, which is why I believe we sent that bill on two separate occasions, and there were two separate Speaker's rulings. I cannot recall the exact basis for the Speaker's ruling but I do know that on both occasions I did not agree with it.

**Senator Kinsella:** Honourable senators, a number of questions of principle have arisen in the debate thus far and I wish an opportunity to study them.

**Hon. Pierre Claude Nolin:** I am sure the Honourable Senator Stollery is familiar with the scheme proposed in Bill C-212 where an agency, before establishing a new levy, or user fee, would have to, on top of informing their clients, comply with a series of conditions as set out in clause 4(1).

Clause 4(2) reads in part:

... the Minister must table a proposal in the House of Commons...

Clause 4(2) is followed by a series of subclauses which specify what information must be collected. That information is then sent to a committee of the House of Commons. My question is: Is the committee to which that information would be sent the Standing Joint Committee of the Senate and the House of Commons for the Scrutiny of Regulations?

• (1620)

**Senator Stollery:** Senator Nolin has raised a very important question. It says "committee of the House of Commons," but where is the Senate? I certainly agree with him. It is a good question.

**Senator Nolin:** Perhaps the sponsor of the bill in the Senate can inform the committee that will study the bill in due time that an amendment would be proper to change the phrase "a committee of the House" to "a joint committee of both Houses" to study the information when there is a new levy or user fee.

**Senator Stollery:** I would have no objection to such an amendment. I noticed that as I was reading the bill as well.

On motion of Senator Kinsella, debate adjourned.

## FOREIGN AFFAIRS

### BUDGET ON STUDY OF TRADE RELATIONSHIPS WITH UNITED STATES AND MEXICO— REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the fifth report of the Standing Senate Committee on Foreign Affairs (budget—release of additional funds (study on the Canada-United States and Canada-Mexico trade relationships)) presented in the Senate on October 2, 2003.—(*Honourable Senator Stollery*).

**Hon. Peter A. Stollery:** Honourable senators, I move the adoption of the report.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I would ask the chair of the committee to provide a little explication.

**Senator Stollery:** Honourable senators, the funds that have been approved by the Standing Committee on Internal Economy, Budgets and Administration are for phase two of the project that has been approved by the Senate, our study of NAFTA. The funds are needed to permit some members of the committee to go to Mexico to complete the Mexico City part of the review that we have been conducting of the free trade agreement. I have discussed this with Senator Di Nino, who is very much aware of the situation.

**Senator Kinsella:** Honourable senators, I believe that the study the Standing Senate Committee on Foreign Affairs is doing is very important. Is committee working on a specific term of reference?

**Senator Stollery:** Yes, we are. This is totally within the terms of reference approved by the Senate when we started our study of NAFTA. When we speak of NAFTA, we tend to concentrate on the Canada-U.S. part, but we must remember that the agreement also includes Mexico, which is what this motion is all about.

**The Hon. the Speaker pro tempore:** Is it your pleasure, honourable senators, to adopt the motion?

Motion agreed to and report adopted.

## HUMAN RIGHTS

### BUDGET ON STUDY OF SPECIFIC CONCERNS— REPORT OF COMMITTEE—POINT OF ORDER

On the Order:

Resuming debate on the motion of the Honourable Senator Chaput, seconded by the Honourable Senator Trenholme Counsell, for the adoption of the fifth report of the Standing Senate Committee on Human Rights (budget—study to hear witnesses with specific human rights concerns) presented in the Senate on September 25, 2003.—(*Honourable Senator Lynch-Staunton*).



**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I wish to raise a point of order. I could have raised it last week, but I wanted to raise it when the chair of the committee was here. I understand that she recently was the victim of a nasty accident. I am glad to see her back and I hope that she has recovered as well as she looks. Out of basic courtesy, I thought it was appropriate to wait for her to be here before raising a point of order, rather than taking advantage of her absence.

The point of order is simple; it is that the authority being asked for by the committee is not within its terms of reference, which are quoted in the report to help justify the request for funds.

The terms of reference were introduced on May 14 and were approved by the Senate on May 27. They read:

That the Standing Senate Committee on Human Rights be authorized to hear from time to time witnesses, including both individuals and representatives from organizations, with specific Human Rights concerns;

And that the committee report to the Senate from time to time and table its final report no later than March 31, 2004.

Nowhere in these terms of reference is there a request to travel. It has always been our practice that if a committee believes that it must travel to fulfil its terms of reference, it includes that request in its original terms of reference so that the Senate is informed, at the time of the request, exactly how the committee intends to carry out the commitment the Senate agrees it is to undertake. The wording is usually to the effect that the committee can travel from time to time in Canada and outside of Canada.

This is not in the original terms of reference. The authority here being requested is that the some members of the committee, and I believe the clerk, be authorized to travel abroad on a fact-finding mission.

I will not argue the validity or non-validity of the trip. I will restrict myself to the point of order, which is that the terms of reference do not authorize any travel by this committee anywhere. To support my contention, I will quote Erskine May, twenty-second edition, page 633, under the subheading "Orders of reference":

A select committee, like a Committee of the whole House, possesses no authority except that which it derives by delegation from the House by which it is appointed.

I would also like to quote Beauchesne's sixth edition, page 233, paragraph 831(2):

A committee is bound by, and is not at liberty to depart from, the Order of Reference.

Based on those two authorities, it is my contention that the terms of reference limit the committee's study of human rights to the national capital region because no authority was requested at the time to pursue its study beyond that geographical area.

Madam Speaker, I ask you to consider my point of order and, hopefully, confirm it.

**Hon. Shirley Maheu:** Honourable senators, when the Standing Senate Committee on Human Rights first contemplated travelling to Geneva and Strasbourg, the visit to the United Nations and to human rights institutions of the Council of Europe was seen as a means to assist the committee in better understanding Canada's international human rights obligations and to get a bird's-eye view of the structure of human rights protection and promotion at the international level.

In our era of globalization, human rights cannot be studied from a strictly national perspective. Canada's leadership in international forum, both regional and universal, speaks loud and clear about the country's commitment to the international promotion and protection of human rights. As a standing committee of the Senate of Canada, we not only share this commitment but are also an integral part of its implementation.

Committee members gained knowledge of Canada's obligations under the inter-American system for the protection of human rights in the course of the previous study undertaken by the committee, during which, I might advise, the committee did travel to Costa Rica.

• (1630)

They also learned about the structure and the mandate of the institutions that oversee the situation of human rights in the Americas. The visit to human rights bodies in Geneva and Strasbourg will allow the committee to expand its knowledge of the international human rights system and effectively implement a global approach to the human rights issue consistent with Canada's role as a leader in this area.

Meeting with the European Court of Human Rights and representatives from other human rights' institutions of the Council of Europe is essential to the committee's work, particularly in the light of close interaction between bodies of the inter-American system for the protection of human rights and their European counterparts.

It is also relevant, especially now, because our own courts often look to the jurisprudence of the European Court of Human Rights and its interpretation of the European Convention on Human Rights. This is when they defined the scope and content of our own Charter and provincial human rights legislation.

Meeting with representatives from United Nations institutions in Geneva will, as mentioned earlier, contribute to the committee's better understanding of Canada's international obligations and their impact on Canadian domestic law. This is directly related to the general mandate of this committee.

We now know it is also related to the specific study the committee is currently working on. The study upon key legal issues affecting the subject of on-reserve matrimonial real property on the breakdown of a marriage or a common law relationship and the policy context in which they reside has further enhanced the relevance of the trip to Geneva and Strasbourg. Several witnesses have brought to the attention of the committee concluding observations and recommendations of international bodies, such as the Human Rights Committee and the Committee on Elimination of Discrimination against Women. These bodies have specifically identified the lack of protection of Aboriginal women's matrimonial rights as a source of concern and a violation of Canada's international obligations, which requires action on the part of the Government of Canada.

The committee has been asked to make recommendations as to possible solutions to address this issue in Canadian law. However, the reality is that this is not only an international issue but also a national one. Now, more than ever, it is crucial for the Standing Senate Committee on Human Rights to include in its work, the international dimension and repercussions of the issues it studies.

In addition to allowing the committee to gather critical information for the purpose of its work, this trip will advance the work of the Canadian Senate, just as the trip to Costa Rica did in the context of the previous study.

[Translation]

Honourable senators, the decision must be made now for one very simple reason: in order to satisfy the needs of the committees and the Senate. The trip is planned for our recess week. A great deal of time and effort has gone into the preparation of our program. This trip has been organized and supported by all members of the committee, including the opposition. Departure is planned for Friday, October 10. That is why, honourable senators, I would appreciate your immediate attention to this report.

[English]

**Senator Lynch-Staunton:** Honourable senators, that is a very eloquent statement that one cannot fault, but the argument is not on the validity of the trip. I made a point of saying at the beginning of my intervention that I am not here to argue the merits or demerits of the trip. I am here to point out through a point of order that the trip has not been authorized within the terms of reference approved here in May.

Reference was made to a trip to Costa Rica. That was as a result of a specific instruction by this chamber to look into the Inter-American Convention of Human Rights. It was part of the committee's mandate to go to Costa Rica, where the centre is located. Here, we have general terms of reference saying that the committee will meet from time to time. I do not want to repeat myself except to say that meeting from time to time and having specific meetings abroad on specific dates is not the same thing. Therefore, I reassert or re-emphasize that there is a valid point of order here. If the Senate wants to authorize such a trip, then it is up to the committee to come forth with proper terms of reference, after which we can decide accordingly.

[ Senator Maheu ]

Since it is not within the mandate, I do not think that we should even be considering this item. That is the basis for the point of order.

[Translation]

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, there are times I do not agree with the honourable senator. When the honourable senator alludes to the committee's order of reference, it seems the order of reference is sufficiently broad to allow for study and meeting with the people who deal with these questions of human rights.

The order of reference received by the committee, I agree, does not mention travel specifically. Still, it seems the order is open enough to permit travel.

Before any special expenses are incurred for such a trip, the committee must prepare a budget showing the expenses related to the travel, which are not special expenses, for the people going on this trip. The budget is presented to Internal Economy, which examines it. Then, Internal Economy accepts, rejects or modifies the budget, in accordance with the needs of this committee and the other committees.

In this case, that exercise was carried out. The Standing Committee on Internal Economy, Budgets and Administration examined the budget and agreed to a certain amount of money for the proposed trip. The Chair of the Standing Committee on Internal Economy, Budgets and Administration tabled her report in this House. That report was accepted by the Senate. The Chair of the Standing Committee on Human Rights is submitting to us on behalf of her committee a proposal that has already been studied and is intended to enable this committee to pursue the mission this Chamber has given it to study human rights issues.

That request, honourable senators, appears to comply totally with our procedure. As a result, the permission to travel should be given. It is of course up to this Chamber to decide whether the budget we have before us at the request of the committee chair ought to be accepted. That is precisely what we need to address. The request from this committee is, therefore, totally in order.

[English]

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, the point of order raised by Senator Lynch-Staunton speaks directly to the issue of an order of reference. Either we consider these orders of references as being important or we do not. The order of reference that was given to the Standing Senate Committee on Human Rights — and Senator Maheu has drawn our attention to it — was to study the Inter-American Convention of Human Rights. In order to study that convention, it was perfectly reasonable that the committee ought to meet with those who administer the Inter-American Convention of Human Rights. The visit to the Human Rights Centre of the OAS in San José was well within their mandate. They were studying not simply the Inter-American convention but, more importantly, Canada's adherence or non-adherence to the OAS convention. That was the Canadian interest and a specific order of reference was given to the Human Rights Committee to study the Inter-American Convention of Human Rights for which travel was necessary and, I thought, most appropriate.



• (1640)

The office of the United Nations High Commissioner for Human Rights is located in Geneva, as is the office of the United Nations Committee on Human Rights, to which communications can be filed by Canadians because of the ratification by Canada in 1976 of the International Covenant on Civil and Political Rights and the ratification by Canada of the two optional protocols. There is a specific Canadian interest in the operations of the committee that administers the International Covenant on Human Rights because Canada has ratified that covenant.

There is also the International Covenant on Economic, Social and Cultural Rights, to which Canada submits periodic reports on its progress, together with the provinces, in meeting the obligations that it has assumed under that covenant. There is a separate human rights committee that examines the Canadian reports.

I believe that it will be important for the Senate to study the reports that Canada has submitted under both of those international treaties and what the international human rights committees based in Geneva have said about Canada's performance. Honourable senators will recall that two years ago, Canada was roundly condemned by the committee that administers the International Covenant on Economic, Social and Cultural Rights because of the unacceptably high level of child poverty in Canada.

Thus, it is incumbent upon Parliament to delve into what the international human rights committee is saying. Should we be looking at the International Covenant on Economic, Social and Cultural Rights? Should we be looking at the process given that Canada's periodic report under the International Covenant on Civil and Political Rights has just been received? The Senate would want to make a determination as to whether we would want to give priority to the Standing Senate Committee on Human Rights to examine the International Covenant on Economic, Social and Cultural Rights; or, do we want to give priority to the committee examining the International Covenant on Civil and Political Rights? That is why we give a specific order of reference to our committees to study the kinds of things that the Senate wants to have studied.

Reference has been made to a visit to Strasbourg. Yes, the work in the field of human rights that is done by different organizations in Strasbourg is interesting. However, the question is whether there is a Canadian application to the European Convention of Human Rights. We would have to provide a specific order of reference such that the Senate wants its Human Rights Committee to give priority to conduct such a study.

Providing a general order of reference would be like saying to the Standing Senate Committee on Social Affairs, Science and Technology that it has a mandate to study health and, therefore, travel around the world to study health. Experts in different fields of health live in all areas of the world. Our resources are fairly limited. The Senate establishes the priorities and we use the mechanism of specific orders of reference. A question was raised as to the priority that committees are giving to proposed legislation and where that fits into the order of priorities of our standing committees, whether it be government bills or private members bills.

The orders of reference given by the Senate are extremely important. Committees must live within the bounds of those

references because that is the will of the Senate. The point of order raised by Senator Lynch-Staunton is extremely important because otherwise the system would fall apart.

**Hon. Rose-Marie Losier-Cool (The Hon. the Acting Speaker):** Do any other honourable senators wish to speak on the point of order raised by Senator Lynch-Staunton?

**Hon. Terry Stratton:** I would like to reinforce what Senator Kinsella has said. The description of asking permission to do a study is approved. If it were broad enough, it would allow one to do anything, as Senator Kinsella has stated.

I have a question for the Deputy Leader of the Government in the Senate. Would it be fine, if the mandate requested by any committee were broad enough, for the committee to go anywhere in the world, having requested the budget to do so? There has to be a point at which a line is drawn or a fence is put up. The committees owe it to this chamber, prior to coming here, to know that they have done enough work to realize where they have to go and what they have to study. That should have been looked at in the beginning. If this particular committee wanted to cover this off under that study, surely to goodness that would have been done.

It is astonishing that a committee would have the temerity to not only look at taking the trip but also to plan the trip, to establish the dates and to book the tickets before it comes before the house for approval. The whole thing was planned. The dates are set and we are going without a mandate from this chamber.

**Senator Maheu:** That is not true.

**Senator Stratton:** With apologies, honourable senator, that is my understanding.

**Senator Lynch-Staunton:** That is what we were told.

[Translation]

**Senator Robichaud:** Honourable senators, I do not totally agree with Senator Stratton that the committee was a bit hasty in organizing its trip. I think that trips must be organized in advance, because plans can always be changed. Often, waiting till the last minute costs more, and then the committee is criticized for not getting organized earlier.

Senator Stratton has said that it was not a good thing to have an order of reference so broad that a committee could do anything it wants. Even with a broad order of reference, all budgets have to be approved by this Chamber, and even with a broad mandate, each committee must go before the Internal Economy Committee. It has to get approval for a budget in keeping with its estimated costs for a specific study. I think that is exactly what this committee has done.

When we approved the budget of this committee, it was not free to go anywhere it wanted. It is going to two specific places, with a specific amount of money that cannot be used for other purposes. Even if the mandate is open, this Chamber always has the power to accept or refuse what a committee proposes to us.

• (1650)

**Hon. Pierre Claude Nolin:** Honourable senators, I had not intended to speak, but there is trap we must not fall into. You will ponder this, because it is important. Senator Robichaud would have you believe that a decision has already been made; that is what his remarks suggest. The Standing Senate Committee on Internal Economy, Budgets and Administration looked at the issue, gave its approval and tabled its report. Has this report been adopted? It should not have been, because the real decision is the one we are being asked to make today. The real question is whether or not we approve the committee's budget. The answer is that it is not the Internal Economy Committee's report that matters, but the decision we will be making today. According to Senator Robichaud's argument, this motion is redundant, outdated, when in fact it is very important, because it will authorize the committee not only to spend but to travel.

I would not want you to fall in this little trap of thinking that, because we approved the report of the Internal Economy Committee, we therefore have already given our consent. That is not true, and I do not want it to be interpreted as such.

**Senator Robichaud:** In response to the Honourable Senator Nolin, in no way do I mean to infer that because the Internal Economy Committee agreed to the budget, we must agree. Absolutely not. I said earlier that the Senate will make the final decision. I was simply referring to the procedure that a committee must follow to get its expenses approved. This is the procedure we are following. In short, even if the committee and the Senate give their approval, the process must be presented to the Senate. I do not want to mislead anyone, and I want to ensure that this is quite clear.

**Senator Lynch-Staunton:** I want to remind the Honourable Senator Robichaud and all the honourable senators that it is customary, when a committee asks for a specific mandate to consider a particular subject, for its original request to include a request for permission to travel if the committee feels this is necessary to properly execute its mandate and reach a successful conclusion. Not a few months after the fact. Senator Robichaud in particular must remember that he wrote it, and requested that the words "travel abroad" be struck from a mandate for budgetary reasons. If the committee wants to travel within or outside the country, it must indicate this in its initial request, when its mandate and budget are first debated.

This committee has ignored this custom by not initially requesting such authorization but by requesting it at the last minute. I too am offended, not only by its request to exceed its original mandate, but also by the indication that all the arrangements have been made and that the committee is leaving in three days. Frankly, this is a bit presumptuous, to say the least.

**Senator Maheu:** That is totally false. I said that the arrangements had been made, but never without the Senate's approval. I say to Senator Lynch-Staunton that this is untrue, as he well knows.

[English]

**The Hon. the Acting Speaker:** Are there any other senators who wish to speak on the point of order raised by Senator

Lynch-Staunton? If not, I thank all honourable senators. The chair will seek advice and give an answer to this question as soon as possible.

## COPYRIGHT ACT

### BILL TO AMEND—NOTICE OF MOTION TO WITHDRAW FROM BANKING, TRADE AND COMMERCE COMMITTEE AND REFER TO SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE

Leave having been given to revert to Senate Public Bills, No. 3:

**Hon. Joseph A. Day:** Honourable senators, I was temporarily out of the chamber when the Senator Nolin so succinctly and effectively spoke on this issue. I missed the reference to the committee. I would propose that this go to the committee that has dealt with other copyright issues in the past, that being the Standing Senate Committee on Social Affairs, Science and Technology. That committee dealt with the other most recent copyright legislation. I have spoken to the chair of the committee, and he is prepared to receive this bill. With the permission of honourable senators, I propose, seconded by Senator Mahovlich, that Bill S-20 be not sent to the Standing Senate Committee on Banking, Trade and Commerce but, rather, to the Standing Senate Committee on Social Affairs, Science and Technology.

[Translation]

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I moved this motion and I have no problem with what Senator Day is proposing.

[English]

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, if we proceed this way, it seems to me that there is a procedural problem in terms of overturning a vote that would require, from my point of view, a two-thirds majority. I think it would be much better if we simply asked for unanimous consent to have the "Standing Senate Committee on Banking, Trade and Commerce" changed to the "Standing Senate Committee on Social Affairs, Science and Technology," rather than going via a motion.

To add to this, I was trying to remember which committee had dealt with copyright before, and I had a recollection that it was the Standing Senate Committee on Legal and Constitutional Affairs. Senator Robichaud thought it was the Standing Senate Committee on Banking, Trade and Commerce. Senator Day is absolutely correct, in that it was the Standing Senate Committee on Social Affairs, Science and Technology.

If we simply, by unanimous consent, agree to change "Banking" to "Social Affairs," we will avoid a procedural problem.



**Hon. John Lynch-Staunton (Leader of the Opposition):** If I may, I have no objection to which committee it is referred except that certain senators, who are not present now, agreed to the motion that it go to the Standing Senate Committee on Banking, Trade and Commerce. There are probably on duty elsewhere. It is not my intention to delay this matter, but to be fair to those who were here during the first question and not here for the second. Perhaps, with leave, Senator Day would give notice of motion that tomorrow he will make that recommendation so everybody will be alerted that a change is being requested, rather than have those people learn that was a change made in their absence without notice.

**Senator Day:** I am sorry to have caused this problem, honourable senators. I was only out for a short while. In the interest of expediting this matter, I give notice that I will be moving tomorrow that the matter be referred not to the Standing Senate Committee on Banking, Trade and Commerce but, rather, to the Standing Senate Committee on Social Affairs, Science and Technology.

**Senator Lynch-Staunton:** I would suggest that the honourable senator ask leave to give notice today so that the matter may be debated tomorrow.

**Senator Day:** I would then ask for leave.

**The Hon. the Speaker pro tempore:** Is leave granted?

**Hon. Senators:** Agreed.

[Translation]

**Senator Robichaud:** It is recorded in the minutes that the Honourable Senator Day gave notice, and notice was duly given.

[English]

**Senator Kinsella:** I will simply ask the chair to look into how strong the majority has to be, if a vote is taken on the motion of which we have now received notice. It is my submission that we need more than 50 per cent plus one, that two-thirds is what is needed.

If there is a vote on it, the chair is given a head's up as to what rule applies.

[Translation]

**Senator Robichaud:** Honourable senators, I do not object to checking the rule. I predict there will not be any problem adopting this motion, since we almost agreed to it by unanimous consent. Everything should be carried out properly once the motion is presented tomorrow.

[English]

## STUDY ON HEALTH CARE SERVICES AVAILABLE TO VETERANS

### INTERIM REPORT OF NATIONAL SECURITY AND DEFENCE COMMITTEE—DEBATE CONTINUED

On the Order:

Resuming debate on the consideration of the eighth report (interim) of the Standing Senate Committee

on National Security and Defence (Subcommittee on Veterans Affairs) entitled: *Fixing the Canadian Forces' Method of Dealing with Death or Dismemberment*, deposited with the Clerk of the Senate on April 10, 2003.—(Honourable Senator Meighen).

• (1700)

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I have a note that this important matter is at day 15 on the Order Paper. The report in question, as honourable senators may recall, had its origin in the tragic experience of Major Bruce Henwood. Major Henwood was serving with the Canadian Forces in Croatia in 1995, and while out on a measure there, he had an unfortunate accident where he lost his limbs when a Russian anti-tank mine exploded. That incident was only the beginning of a long and painful ordeal for Major Henwood and his family.

More recently, tragic events affected two of our Armed Forces personnel in Afghanistan last week, one of whom was a resident of my own province of New Brunswick, Sergeant Short.

The report of our Subcommittee on Veterans Affairs looked into the issue of Major Henwood, and how he had faced such an ordeal in trying to get the Canadian Forces insurance plan to cover him. In short, at that time only those of the rank of colonel or above were covered. Major Henwood was below the rank of colonel and was not covered.

At the end of the day, because of the work of our committee, that has been changed and all members of the Armed Forces who are injured or, more tragically, lose their lives, notwithstanding their rank, are covered.

This is an important report. I know that my colleague, Senator Meighen, will continue the debate.

On motion of Senator Kinsella, for Senator Meighen, debate adjourned.

## UNIVERSITY RESEARCH FUNDING FROM FEDERAL SOURCES

### INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Moore calling the attention of the Senate to the matter of research funding in Canadian universities from federal sources.—(Honourable Senator Kinsella).

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, there is no wiser investment of public funds than the investment of a country in the education of its next generation of leaders, and also in the new generation of knowledge. The first is achieved by ensuring that the availability of the necessary financial means will ensure access to post-secondary education of our students; and the second is achieved by underwriting by the state of cutting-edge research.

The debate to date on this important inquiry has drawn our attention to a particular passage in the Martin-Chrétien government's last Speech from the Throne. Here is what the federal government of Finance Minister Paul Martin and Prime Minister Jean Chrétien told Canadians about their plan:

It has invested in access to universities and in excellence in university research because Canada's youth need and deserve the best education possible, and Canada needs universities that produce the best knowledge and the best graduates.

Therefore, honourable senators, the first question is how well has this Martin-Chrétien plan worked in terms of access to our universities across Canada?

In the universities and colleges, we have seen Canadian families and Canadian students hit with substantial increases in tuition. The students are often holding down one or two jobs while at the same time trying to attend university. The financial resources of these assiduous students nevertheless are shrinking.

In order to access post-secondary education, Canadian students are borrowing more to finance their education than ever before. I am confident that every member of this chamber has personal knowledge of this serious financial problem faced by our students.

Clearly, student indebtedness is a national disgrace. However, it also represents, honourable senators, a failure of Canada to meet its international obligation to make post-secondary education more financially accessible.

As we had occasion to mention in an item under debate a few moments ago, Canada is a party to the international treaty law under the International Covenant on Economic, Social and Cultural Rights, ratified by Canada. This is important because, when Canada ratified the International Covenant on Economic, Social and Culture Rights, it did so with the written consent of every jurisdiction in Canada. Every province in Canada replied to a letter that was initially sent out to the premiers by Prime Minister Pearson. It took many years, but in 1976 all of the jurisdictions in Canada agreed in writing that Canada should ratify this international human rights treaty.

I wish to draw to the attention of honourable senators Article 13 of this treaty, to which we have obligations under international treaty law, provide as follows:

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right...

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education.

Honourable senators, not only have we not been meeting our human rights obligations under international law, higher education has not become progressively freer under the

Martin-Chrétien government. The past 10 years has seen the opposite occur. Canadian students are more and more in debt. As a country, we are in violation of our international agreement as well as violating the economic future of our youth.

Supporters of the status quo will sail out the Millennium Scholarship Fund as this government's answer to the national failure to address access.

• (1710)

However, honourable senators, the Martin-Chrétien government's flagship, the Millennium Scholarship Foundation, is like the ships of the Canadian Steamship Line. Neither do much for the Canadian worker, nor for the worker's family members who face exorbitant costs to access Canadian colleges or universities. Indeed, the Senate ought to consider a focus study on the illusion that the Millennium Scholarship Fund represents a commitment to provide accessible education to all Canadian students.

The second matter to be examined from the passage that our colleague quoted from the Speech from the Throne is how fair the Martin-Chrétien plan has been with respect to investment in research. We have learned from those who have participated in this debate that the Martin-Chrétien research spending has been very unfair to Atlantic Canada. Senator Moore told us:

The information revealed by my research points to a disparity which exists between Atlantic Canadian universities and researchers as they have been short-changed compared to their counterparts in the rest of the country.

It is clear that there is a systemic problem in the way the federal government funds research in our universities. This systemic problem has had a special adverse impact on institutions and researchers in Atlantic Canada.

The model upon which federal research funds are allocated is flawed and discriminatory. Senator Moore has accurately explained how, for example, the Canada Research Chairs Program is based on the history of an institution's receipt of grants from the CIHR, NSERC and SSHRC — no history, no money. Even their provision for "smaller" universities has the effect of discriminating against Atlantic Canada because "smaller" is still defined in relation to the institution's history of receiving, not any factor related to their actual size.

Further, the Canadian Foundation for Innovation has similar effects of discriminating against Atlantic Canada. It requires that in order to get 40 per cent project funding, the other 60 per cent has to be in place from either the university or the private sector. With the relatively small size of university endowments and, in fact, the private sector itself in Atlantic Canada, this is almost an insurmountable hurdle to overcome. As well, in the CFI, which disburses public funds, only two of its 15 board members hail from Atlantic Canada and only eight of its 118 multi-disciplinary



board members that decide on funding hail from Atlantic Canada, while 25 hail from the United States and five hail from France. How is Canada's public good served when a board composed of more than one quarter non-Canadians, who outnumber particular regions of Canada, decides how this country allocates its research money?

Honourable senators, the Canada Social Transfer Agreement is based on funding per capita, as opposed to funding per student. This means that provinces with a disproportionate number of students compared to their population do not receive the same benefit as those with a more proportional comparison. This has the effect of discriminating against Atlantic Canadian institutions because it is those institutions that do have a disproportionate number of students. In fact, some communities in Nova Scotia would not exist had churches not founded universities there over the last two centuries. This also has the effect of punishing provinces whose universities accept students from other provinces, as they do not receive the benefit of the added per capita transfer because their legal permanent address is their home province, not the province in which they are attending school.

While these funding formulae may be academic exercises for those who formulate them, they have dire consequences for post-secondary institutions in Atlantic Canada. Honourable senators know that systems neutral on their face can nevertheless be discriminatory in their effect. Research goes to the heart of the academy. While this notion has been challenged in recent years, research and teaching are traditionally said to be complementary in nature. Active researchers are active teachers. The academy teaches research and researches teaching.

Honourable senators, if post-secondary educational institutions, in any region, cannot qualify for research funding because of systemic barriers, its researchers will go to the institutions that do qualify. This has been the case in my own province. I know of professors lost to Ontario and British Columbia, and I know of another professor who became so frustrated with the lack of research funding that she is taking an unpaid sabbatical leave to do research in Toronto. Where the best professors go, the students follow. Enrolment in universities is up despite tuition doubling in the past decade, and we need more and more teachers, and teachers who are able at the same time to do research.

If we are to restore equity to the system, we need to do two things, in my view. First, we must agree that any funding formula that excludes members of the Canadian Association of Universities and Colleges is wrong and must be fixed. Any public university or college should be eligible for research funding based on three criteria: the academic merit of their proposal, service performed to the public good and adequate budgeting of the resources requested. This idea that eligibility for funds be based on past history of receiving grants is like saying that only past lottery winners can buy a ticket for Friday's jackpot.

Second, post-secondary education funding needs to shift paradigms to focus on the students actually attending the institutions. Funding should be based on student population,

not provincial population. This way, the students help drive funding by the choices they make, as opposed to having funding driven by choices of those who will not suffer the consequences of their choices, namely, a poor education.

Whatever direction is taken, honourable senators, we must also recognize the role played by the provinces in running post-secondary education systems. Like health care, we only decide how much the federal government will contribute, while they decide how that money is spent and are tasked with finding the money to cover our shortfalls. Any action taken must not be taken in isolation from the provincial ministers responsible for post-secondary education research. To this end, I will conclude by joining with those who believe that the time has come for the Government of Canada to have a federal ministry for post-secondary education and research. Such a ministry would make the work with the premiers, who have, as we said, the constitutional responsibility for education, much more focused work. Currently, the federal government has its involvement in post-secondary education and research spread across far too many departments and agencies. If the promotion of research were facilitated by greater focus, so also would be the effectiveness of the federal machinery of government, if it was more focused, and more focused, I suggest, in a specific dedicated ministry for post-secondary education and research.

• (1720)

**Hon. Laurier L. LaPierre:** I rise to speak to the many important questions that have been raised by my honourable colleague, who knows much more about these things than I do.

I rise to approve the spirit of the statement made by Senator Moore to the effect that as a nation we need to spend more money to make our student population capable of attaining their ambitions, their desires and their dreams.

It seems to me, however, that in this process we are forgetting certain things. We are forgetting, first, that the university system is a total mess. It is essentially the place where madness reigns, and reigns supreme. It is an empire built by a considerable number of people who keep building empires that cost more and more money to house, to keep going, to administer and fill with students. There are thousands of students in one classroom, lacking seating space, sitting in the stairs or standing up. I was told by a student on the plane this morning on her way to Ottawa that if she is not at her class 20 minutes in advance, she will have to stand up in the back because all the seats will have been taken, as well as every cement step going down into the auditorium. A little professor will come to teach these hundreds of students, hoping that they will be able to learn something.

There is something profoundly wrong in the process of how we approach post-secondary education. Post-secondary education is divided into two or perhaps three categories. There is the category of apprenticeship, of trades and skills. No one talks about those areas when it comes to post-secondary education. No one talks about the hundreds of thousands of dollars that need to be spent, although we know that 10 years from now we will have to import skilled labour into our country to do what our society considers to be jobs that are perhaps not as important as others.

We are not developing the appropriate skills and talents. We have no structure of apprenticeship programs to make that possible. A considerable number of young people, particularly young men, drop out of school at grade 10 because they feel that there is no future for them. They cannot go to university because their parents cannot afford it.

I will give you an example, honourable senators. Last night I was in North Bay speaking to the Canadian Club. We were having a discussion about this subject. A lady said to me that her grandchild had come to the university. She said that they needed \$14,000 for her to live in residence, for her tuition and her student fees, so that she could enjoy the totality of the experience of being a student. The girl's parents do not have this kind of money. However, she is lucky because her grandparents have a big house and consequently she can live with them and go to school at the same time.

I asked myself, why is that the case? Why is it that in a rich country like ours it is not possible for our young people, who have the capacity to pursue skills or education, to afford to do so?

There are reasons for that phenomenon that must be looked at, honourable senators. The first one is the imperial building mania of universities. Maybe we should seriously consider undergraduate teaching to be done in undergraduate institutions, and post-graduate work, to obtain a Ph.D., to be done by universities, which would be run completely by the federal government.

I agree with Senator Kinsella that the time has come for the federal government to assume its responsibility and to create a ministry of higher education and something to do with skills. Since I am not a constitutionalist, I do not know how to put it. The provinces can say goodbye. What is happening now is that the federal government transfers enormous sums of money to the provincial governments for higher education purposes. The money often does not go there. Governments know that if they receive a millennium grant, what they receive is deducted from the grant or loan they might have received. We do know that a lot of the money finds its way into the consolidated revenue fund of the province; there is no accountability.

The time has come to end the practice of giving blank cheques to provinces. The time has come to do as we are doing with regard to health care, to demand exact accountability of the sums of money that are given.

The same may be said — and I see Senator Pearson over there — about the money we transfer for child care. Much of that money is used to build roads or for other purposes than what it was intended for by the federal government.

I agree that we must do something. We must reassume the responsibility of the federal government, and the federal Parliament, to be the people's Parliament and government and to serve the people totally and completely.

Further, the Confederation we have was created in 1867 when almost 90 per cent of our population was rural, and this was the case until after the Second World War and into the 1950s. Now

we have an urban society where 85 per cent of our people live. Maybe the time has come to create a confederation of city states rather than provincial states, with new parameters and new paradigms — to use a word we used in the 1970s under Shirley MacLaine and the human potential movement, which I have not heard for 30 years.

I thank my honourable friend for bringing this matter to our attention, and I hope all senators will participate in this important debate.

On motion of Senator Losier-Cool, debate adjourned.

[Translation]

## LEGAL AND CONSTITUTIONAL AFFAIRS

### COMMITTEE AUTHORIZED TO STUDY LEGAL AID

On the Order:

Resuming debate on the motion, as modified, of the Honourable Senator Callbeck, seconded by the Honourable Senator Bacon that the Standing Senate Committee on Legal and Constitutional Affairs be authorized to study the status of Legal Aid in Canada and the difficulties experienced by many low-income Canadians in acquiring adequate legal aid for both criminal and civil matters; and

That the Committee report no later than December 31, 2003.

**Hon. Maria Chaput:** Honourable senators, I am entering the debate on the notice of inquiry given over a year ago by the Honourable Senator Callbeck on the legal aid system in Canada, and particularly the difficulties experienced by many low income Canadians in obtaining adequate legal aid for both criminal and civil matters.

I wish to congratulate the many honourable senators who have spoken on this, making us aware of the importance of the issue and demonstrating the inequalities and weaknesses of our present system.

[English]

Our constitution is founded on the rule of law. It is our right to expect the even application of the law to all Canadians, rich and poor. We are all aware that Canada's laws are increasingly complex and specialized. We all know that professional legal advice is extremely beneficial, and many times essential, for legal disputes.

[Translation]

A number of my colleagues who have added their voices to Senator Callbeck's have spoken of problems in their own provinces.



• (1730)

That is precisely where the primary problem lies in our legal aid system in Canada. The provinces and territories are now in charge of financing legal aid in civil cases, whereas the federal government has maintained a shared responsibility specifically with respect to legal aid in criminal cases.

Until 1995, the federal government, under the Canada Assistance Plan, supported delivery of legal aid services in civil cases. In 1995-96, this plan was included in the Canada Health and Social Transfer, which covers health, education and social programs. This is a federal transfer that is allocated to each province based on a number of agreements between the department, on the one hand, and the provinces and territories, on the other hand.

In 2002, the Manitoba Association of Women and the Law indicated that:

Because a lump sum transfer is involved, the provinces and territories determine their own priorities for this funding. In addition, the federal government cannot dictate the way these funds are spent, nor can it set national standards.

Thus, it appears that legal aid in Canada is no longer a national system of justice, but a program that varies from province to province.

In 2001-02, the provincial and territorial governments committed some \$443 million to legal aid programs. Contributions varied greatly. For example, according to Statistics Canada 2003, pages 26 and 27, we read:

... in 2001-2002, the contribution per capita was \$20.46 in British Columbia, \$10.39 in Manitoba, \$6.31 in Alberta and \$3.05 in Prince Edward Island.

Legal aid contributions are not the only elements that vary. Statistics Canada 2003 reports, on page 5, that "the organizational structure, eligibility criteria, and operation of the program differ" from one province or territory to another.

Therefore, honourable senators, there is no longer a common system across Canada.

In 2002, Sidney B. Linden, Chief Justice of the Ontario Court of Justice from 1990 to 1999, and board chair of Legal Aid Ontario, stated as follows:

Access to justice for everyone — regardless of income — is a fundamental principle of democracy and the rule of law. Equal access and protection under the law require that individuals have legal representation when before the courts in serious matters. This is why legal representation in these matters is a right defined by the Charter of Rights and Freedoms and reinforced by our national justice system.

In 2003, the Canadian Bar Association reiterated what the Manitoba Association of Women and the Law had stated in 2002:

When low-income earners do not have the opportunity to obtain legal representation, there are serious consequences. Just as access to legal advice and services can ensure a certain level of personal and economic security, the absence of this assistance can oblige these individuals to rely more heavily on other social services.

I want to close with a quote by the Honourable Beverly McLaughlin, Chief Justice of the Supreme Court of Canada, in a *Vancouver Sun* article by Janice Tibbetts in 2002:

Providing legal aid to low-income Canadians is an essential public service. We need to think of it in the same way we think of health care or education.

**The Hon. the Speaker pro tempore:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to.

[English]

## AGRICULTURE AND FORESTRY

### FINDINGS IN REPORT ENTITLED "CANADIAN FARMERS AT RISK"—INQUIRY— DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Oliver calling the attention of the Senate to the findings contained in the report of the Standing Senate Committee on Agriculture and Forestry entitled *Canadian Farmers at Risk*, tabled in the Senate on June 13, 2002, during the First Session of the Thirty-seventh Parliament.—(Honourable Senator Stratton).

**Hon. Terry Stratton:** Honourable senators, I am pleased to speak to this inquiry based upon a report of the Standing Senate Committee on Agriculture and Forestry entitled "Canadian Farmers at Risk," which was tabled in the Senate on June 13, 2002. In speaking to this report, I would like to acknowledge the important work done by Senator Gustafson, Chair of the Agriculture Committee when this report was issued. His work in this place is a testament to how influential and effective the Senate and individual senators can be. We are especially privileged to have Senator Gustafson among us because he works in such a diligent, tireless and unselfish manner on behalf of Canada's farming community, of which he is a part. It is this community that, we cannot forget, is so crucial to Canada's economic and social well-being. After all, Canada's agriculture and agri-food system accounts for some 8.3 per cent of our gross domestic product and \$112 billion in annual retail and food service sales. Furthermore, our agri-food system currently contributes between \$7 billion and \$8 billion to Canada's trade balance, representing about 10 per cent of the total Canadian trade surplus.

As the world's third largest agri-food exporter, Canada's agri-food system and the farmers who contribute to it benefit immeasurably from the important work of legislators and decision-makers such as the honourable senator from Saskatchewan, people who have hands-on experience with the subject matter that they discuss, analyze and legislate upon.

With respect to the report "Canadian Farmers at Risk," I would like to focus on one of the many underlying themes of the report that I think is especially important to understand: the relationship between those factors that influence farm incomes and the health of Canada's rural economy. The "Canadian Farmers at Risk" report points out that:

Rural Canada is the heart of our country. This is not simply an emotional attachment. Rural Canada contributes significantly to our economy. It generates 15 per cent of our gross domestic product and 40 per cent of Canadian exports.

Another fact is that farmers comprise a key component of rural Canada, making positive social and economic contributions to rural Canada beyond their primary purpose of food production. The committee hearings that went into the production of the "Canadian Farmers at Risk" report heard from numerous witnesses who underscored how the viability of many rural communities is related to the health of the agricultural industry.

As the committee report asserts, with an industry as large as Canada's agri-food industry, the reality is that at the level of rural municipalities and their surrounding areas, the majority of residents still engage in agricultural pursuits or their work is directly related to agriculture. As well, most of our towns and villages rely on the agricultural community as their key customer base.

• (1740)

Yet, as many of us are aware, rural Canada is undergoing rapid change. This change has been driven by many factors, including the changing nature of the economy, the globalization of markets, the decline of certain resource industries, the rapid growth of major cities — which has been accompanied by a long-term trend of rural depopulation — and the impact of new technologies.

All of these factors and trends are playing a role in shaping the future face of rural Canada, yet it need not be a foregone conclusion that the future of rural Canada must be a gloomy one. For instance, one has just to review the findings of a recent Ipsos-Reid poll which concluded that two-thirds of Canadian farmers remain confident about their economic future, and say on-farm income is sufficient to make a living. The poll also found that 60 per cent of farmers continue to farm because it is a good way of life.

As well, many of the conditions that have given new opportunities for Canadians in urban areas also apply to those who live in rural Canada. For instance, new technologies make it possible to overcome geographic barriers to commerce. Indeed,

some would argue that herein lies the potential for value-added enterprises and opportunities in areas of our country that have historically been more noted for primary production than resource extraction.

It also cannot be forgotten that rural Canada's economy is becoming more diversified. It is a fact, which is borne out by government statistics, that rural Canada's economy has gradually become more diversified and more like that of urban centres. Although natural resource industries like forestry, fishing, trapping, mining and energy provide fewer jobs than they used to, rural Canada has benefited from the creation of new jobs in manufacturing, trade, finance, communication, business, personal services, tourism and transportation.

Nonetheless, despite these trends, the fact is that natural resources, and especially agri-food production, are a dominant part of rural Canada's economic landscape. In focusing on this reality, "Canadian Farmers at Risk" is most useful in addressing the most pressing issues related to rural Canada and the health of Canada's agri-food system as a whole. With this discussion of the importance of farmers to Canada's rural economy, "Canadian Farmers at Risk" chronicled the obstacles that have been weighing heavily on this sector of the economy. To quote the report:

Canadian farmers are facing a wide variety of stresses, including declining farm incomes due to rising costs and lower prices for farm products, unparalleled subsidies given by foreign governments, changing consumer preferences, climatic changes, increased food safety and environmental requirements, insufficient competition in key agricultural markets, corporate consolidation in packer, wholesale, and grocery retail markets, and limited support from governments.

Forced to face these powerful trends, a heavy toll has been extracted from Canadian farmers. For instance, the "Canadian Farmers at Risk" report points out that, between 1999 and 2001, the number of full-time farmers in Canada decreased by 26 per cent, the largest decline in 35 years. As well, the average age of full-time farmers has increased to 57. Finally, young people are less likely to be taking over their family farms, further exacerbating the problems of a decreasing and aging farm population.

Added to these statistics and trends are other realities, such as the fact that, since 1993, over 4,000 farms have declared bankruptcy. Since 1996, Canada has lost over 30,000 farmers, a drop of 11 per cent country-wide.

These statistics and trends do not lie, honourable senators. On the contrary, they tell a compelling story about what it has been like to be a farmer over the last 10 years in Canada — at a time of rapid change. Thrown into this mix is the role played by governments and agricultural policy-makers. Have governments and agricultural policy-makers been making a contribution that is a positive one in this time of great upheaval? I am sure intentions have been good, but results are another matter entirely.



On this front, it is interesting to point out that the "Canadian Farmers at Risk" report adopted as one of its key premises the view that:

...in the past, changes to Canadian agricultural policy and levels of support have been crisis-driven — not vision-driven — with the result that policy changes have not always been farmer-focussed, putting Canadian farmers at risk.

In other words, in the face of some pretty daunting obstacles and brutal trends, the role played by governments in helping farmers adapt to changing conditions has not always been a positive one.

To illustrate the point, reduced and unreliable federal income support measures come to mind. For instance, as Mr. Wayne Motheral, President of the Association of Manitoba Municipalities points out in the "Canadian Farmers at Risk" report:

Between the years 1991-92 and 1998-99, the federal government has taken away approximately \$2 billion annually in support payments from the agricultural sector in Western Canada through the removal of the Crow rate subsidy, reducing safety net programmes, and reducing the amount spent on research and development.

This reduced support can be illustrated in other terms which are just as stark and problematic. For example, poor income support programs forced Canadian farmers to incur \$15 billion in debt since 1993. As well, the federal government has been off-loading its responsibility for agricultural support onto the backs of the provinces. Under the current Liberal regime, the provincial share of agriculture support has grown from 25 per cent to 40 per cent.

Finally, the cost of delivering agricultural assistance in Canada is not borne equally by all provinces, as taxpayers in some provinces pay a higher portion of federal agriculture program costs. For example, the average provincial funding requirement per capita in Saskatchewan is \$127 compared to the \$15 country-wide average.

Add to these conditions the fact that input, feed, labour and transportation costs have been rising, and a not-so-rosy picture of life on the farm emerges. Throw in production-distorting subsidies from Canada's agricultural competitors, which have a downward pressure on the prices farmers receive, added to the occasional years of prolonged drought and a BSE-related trade ban on beef, and the overall portrait of Canada's agri-food industry, as it relates to the policy approaches and income support measures of government, becomes increasingly complex and cloudy.

This brings us back to the point in "Canadian Farmers at Risk" calling upon the federal government to adopt agricultural policy that is vision-driven, not crisis-driven. In doing so, the report called upon the government to engage in comprehensive reviews

of agriculture and agri-food policy every five years; and, most important, to "reverse the decline in support for agriculture in order to facilitate a vibrant farming and agricultural community in rural Canada."

These are important points, honourable senators. They speak not only to the need to adequately fund and develop agriculture and agri-food policy in Canada in a comprehensive manner, but also to do so in an effective manner that is, to quote again from the report, "meaningful for Canadian farmers."

Rather than proceed on an ad hoc basis, the message of "Canadian Farmers at Risk" seems to be for government to get agricultural policy right in the first place in a manner that is legitimized by having a full buy-in from the stakeholders in question — Canada's farmers. On this front, it is interesting to note that in the time since this report was tabled, we have examples of government action which show that this report's policy prescriptions with respect to income support and overall agricultural policy have not exactly been followed.

One example in this regard has been the government's spotty response to income support issues in the face of the bovine spongiform encephalopathy crisis. A second example of where the government is appearing not to have learned from its past mistakes comes in the reaction of farmers to the government's agricultural policy framework, APF.

On this latter point, I would like to quote from Barry Wilson, who is both an astute observer of the ebbs and flows of agriculture policy in this country and also the Ottawa bureau chief for the *Western Producer*. He recently stated:

I've been covering agriculture for a quarter century, and I've never encountered such unanimity as there is against the APF.... It is universally opposed by the farm lobby.

That is a quote from the *Ottawa Citizen* August 28, 2003.

• (1750)

While it is not my purpose to get a comprehensive critique of the current government's position —

**The Hon. the Speaker pro tempore:** Honourable Senator Stratton, your time to speak has expired. Are you asking for leave to continue?

**Senator Stratton:** Yes, please.

**Hon. Senators:** Agreed.

**Senator Stratton:** I thank honourable senators.

While it is not my purpose to get a comprehensive critique of the current government's agriculture policies, I think it is instructive to point out the shortcomings of these policies to underscore the wisdom contained in the Agriculture Committee's "Canadian Farmers at Risk" report. It is on this latter issue where the report seems to highlight the need for governments to listen to those in farming and act on their advice so that agri-food producers could have the tools to meet the evolving conditions and demands of their industry. Only by having government decision-makers and legislators engaged in such a fashion can farmers be effectively supported in the all-important task of continuing the proud tradition of building the rural economy and rural character of our country.

On motion of Senator Gustafson, debate adjourned.

## SERVICES AVAILABLE TO HEARING IMPAIRED USERS OF PUBLIC TRANSPORT

### INQUIRY

On the Order:

Resuming debate on the inquiry of the Honourable Senator Gauthier calling the attention of the Senate to the difficulties faced by the deaf and hearing impaired in availing themselves impartially and in full equality of the information and safety procedures available to Canadians at airports, on aircraft, in ships and on all forms of public transport.—(*Honourable Senator LaPierre*).

**Hon. Laurier L. LaPierre:** Honourable senators, this is the fifteenth day for Senator Gauthier's very fine inquiry. He reminded us that there are 3 million hearing impaired persons in Canada, including himself. There are 28 million of them in the United States.

He also went on to say:

If you are deaf, you have no way of knowing where to go unless a friendly person directs you or helps you. When you get on the plane, there are absolutely no instructions given for people who are hard of hearing or have hearing difficulties — absolutely none. Yet, when they show a film during the flight, the commercial advertising — wine, for example — was captioned. I could read on the commercial advertisement what the people were saying, but they did not use captioning for security notices. I asked them why. The answer was simple, "The screen is too small." I asked the lady, "Why can you sell wine on the small screen but not get safety security instructions on the same screen? That does not make any sense." She said, "That is what I have been told." I said, "Well, we will change that."

Consequently this is what this inquiry is all about.

The last quote I want to use from the Honourable Senator Gauthier is this one:

Airlines say that if there is a demand for a special service, they will provide it. However, people are shy. Generally speaking, when one is deaf, one is a little nervous. There are communication problems. Moreover, if people are not aware of the availability of the service, they cannot ask for it. I have also noticed that some of the hearing impaired are embarrassed by their condition. That is not my case.

He went on to explain how he acquired his deafness.

What the senator is trying to tell us is very simple, honourable senators. It is that every individual, regardless of whether he has an impairment, is a person with fundamental rights. Those fundamental rights are sacred to that person, and no one can interfere with the living of those rights. These rights are in the Canadian Constitution. They are in the Canadian Charter of Rights and Freedoms, the most beautiful document on the planet. They are in the Universal Declaration of Human Rights and other documents of such kind.

However, it seems to me that if we have those rights, we must have the instruments to live them. I walk. I talk. I wave my hands. I am emotional. I am everything that everyone says that I am. I do not seem to be impaired in any way except sometimes in my mind, which I am prepared to admit. However, it seems to me that if you are blind, you need the assistance that you need in order to live as a blind person. If you are deaf, you need to have the instruments that you need to live as a deaf person. You need signs that you can read. You need ways of being able to receive instructions. You need to have people who assist you and communicate with you.

When I was a famous person — three centuries ago — we did a program on what we used to call an insane asylum in a little town in Ontario. We were doing a program on a man who had a fixation that paying taxes was against God's law. Consequently, he refused to pay taxes. He was not really insane — he was just momentarily deprived of some capacity to reason properly. They took him and put him into the insane asylum, as we used to call them. We interviewed his sister, and then we were able to get into the asylum. We hid a camera in a picnic basket, and we planted microphones in someone's wooden leg in order to catch the sounds and sayings of this man. To our amazement, we did what we had to do.

What was more amazing was that we discovered that this place also housed deaf people — deaf people who were judged to be insane and therefore were treated as insane people. I have read since then that in other provinces the same thing happened to highly handicapped people. They were declared to be insane and were relegated to insane asylums. This happened in my province of Quebec. Honourable senators will remember the famous affair of the Duplessis children. I need not go any further to demonstrate the grave injustice of that affair.



Senator Gauthier has found another injustice to a group of people who are impaired. We have not put them in insane asylums, thank God; however, we have to give them the instruments that they need in order to live their lives as fully as possible and to exercise their right of mobility and transportability the way they wish and the way that others are blessed with and are equipped to do. I wish to thank Senator Gauthier once again for awaking us to a very grave human problem that we have to resolve now.

[Translation]

**The Hon. the Speaker *pro tempore*:** If no other honourable senator wishes to speak, this inquiry is considered debated. Honourable senators, it is now six o'clock.

• (1800)

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, with your consent, I suggest that we not see the clock.

[English]

**Hon. Peter A. Stollery:** Honourable senators, I certainly would not want to hold up proceedings, but I would remind honourable

senators that we have committee meetings schedules and witnesses waiting. It would be fine for five minutes. Thank you.

[Translation]

**Hon. Marcel Prud'homme:** Honourable senators, I believe we are concluding. We could agree not to see the clock, not to suspend the sitting, but to allow the committees to sit. We will see how it goes.

**The Hon. the Speaker *pro tempore*:** Is it your pleasure, honourable senators, not to see the clock?

**Hon. Senators:** Agreed.

**The Hon. the Speaker *pro tempore*:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

**Senator Robichaud:** Honourable senators, I move that the Senate do now adjourn.

The Senate adjourned until Wednesday, October 8, 2003 at 1:30 p.m.

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CANADA

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OFFICIAL REPORT  
(HANSARD)

Wednesday, October 8, 2003

THE HONOURABLE LUCIE PÉPIN  
SPEAKER *PRO TEMPORE*



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(Daily index of proceedings appears at back of this issue).

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## THE SENATE

Wednesday, October 8, 2003

The Senate met at 1:30 p.m., the Speaker *pro tempore* in the Chair.

Prayers.

### SENATORS' STATEMENTS

#### WOMEN'S HISTORY MONTH

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, the month of October is Women's History Month. This year's theme is: "What do you mean, women couldn't vote?"

[Translation]

As all good senators already know, October 18 is Person's Day. It also marks the day on which the Senate became instrumental in the full recognition of women's legal rights in Canada.

[English]

Women have made great strides in the public arena since they were granted the vote. Canada has since become a model for other societies as a place that recognizes the rights and freedoms of women as inherent and inalienable. The fact that every citizen in our country takes for granted the equality of women — that this has become a natural assumption for Canadians — is evidence of how far our values have progressed within the broader context of women's history around the world.

[Translation]

Still today, the Senate is playing a lead role as far as female members are concerned. In the other place, only 21 per cent of seats are held by women, whereas here in the Senate 36 per cent of distinguished senators are women.

[English]

Among all our political parties, there are still many impediments for women who would like to become public representatives. All of these parties recognize the importance of increasing the participation of women as candidates. Our national values compel us to respect — even welcome — the voices of women not only in our courts and legislatures, but on every street and in every household in the nation.

Women can be proud of their past efforts to gain full equality because these efforts have subsequently confirmed the universal rights of all people. We have learned that what we once thought of as important divisions are in reality insignificant and that peace and prosperity only result when societies are inclusive of all their members.

Honourable senators, Women's History Month is an opportune time to reflect on ways we can better include women in shaping the future of our public policy. We will know we have been successful the day we no longer measure the percentage of women in any arena and just take their presence for granted.

### THE LATE ISRAEL H. ASPER, O.C.

#### TRIBUTES

**Hon. Terry Stratton:** Honourable senators, I rise today to pay tribute to a man of vision, Israel Asper. First, to his family, we offer our deepest heartfelt condolences. Our thoughts are with them at this time.

I returned late from lunch yesterday and entered the chamber just as Senator Carstairs was paying tribute to the passing of Izzy. I was, needless to say, shocked to hear of his passing. We are still, I think, stunned and in denial. It just cannot be that he is gone. Sadly, it is true: The indestructible Izzy is gone.

Winnipeg is in deep mourning at the passing of this truly great man. He cannot be replaced. He was indeed a true original. His vision will go on, carried on by his family. We are all, particularly in Winnipeg, grateful for that vision and will reap the benefits in the years to come. Above all, Izzy was all about giving back to the community, his country and, indeed, the world. For that, we owe him a debt of undying gratitude.

God bless you, Izzy. We will miss you.

[Later]

**Hon. Joyce Fairbairn:** Honourable senators, I did not want today to pass without saying a word in memory of Izzy Asper. There has been so much said across the country, in the media and in this chamber about the many qualities of Mr. Asper, of his astounding advances and adventures in the world of business, journalism, communications, high finance and politics.

I have known Mr. Asper since I was a young journalist in the 1960s and through all the years following. When our leader mentioned to me, upon coming into the house yesterday, that Izzy had passed away suddenly, the two things that came to my mind were his laughter and his kindness, things that do not always come up in the stories and recollections about this very fine gentleman.

What he did for his city of Winnipeg is beyond description. His efforts to insert a sense of immediacy, pride and aggressive enthusiasm into every part of Western Canada will be greatly missed.

Mr. Asper was also one of the most wonderful spouses and fathers that one could imagine. We will all miss him.



[Translation]

## THE HONOURABLE MARCEL PRUD'HOMME

### CONGRATULATIONS ON RECEIVING LEBANESE SYRIAN CANADIAN ASSOCIATION AWARD

**Hon. Lise Bacon:** Honourable senators, it is with great pleasure and sincere friendship that I want to pay tribute today to the Honourable Marcel Prud'homme, who has just been honoured by the Lebanese Syrian Canadian Association.

Last Sunday, our honourable colleague was awarded the association's 2003 Lifetime Achievement Award during a reception at the Château Vaudreuil. There are two good reasons for this award: Senator Prud'homme's long and productive political career, and the profound and sincere friendship he enjoys with the Syrian and Lebanese communities in Canada.

I must admit that I have known Marcel Prud'homme for a long time. I know I would not be wrong to describe our colleague as passionate, full of energy and remarkably determined.

He defends the causes he believes in with total conviction and without hesitation, even though some may scoff. But Marcel Prud'homme is one of those people who stay the course and finish what they begin, no matter what the cost.

He was only 30 years old when he was first elected to the House of Commons, after distinguishing himself as a student activist. Before that election, he also held positions of responsibility with the youth wing of the Liberal Party.

Successful in a by-election in 1964, he was regularly re-elected as the member for Saint-Denis from 1965 to 1988. That is an enviable political record, you will agree.

In 1993, Prime Minister Mulroney invited him to take a Senate seat. Marcel Prud'homme agreed to continue his work in Parliament from the vantage point of the upper chamber, because he believes firmly in the bicameral nature of our Parliament and in the sober second thought for which our Chamber is known.

During his long career, Senator Prud'homme has always shown a particular interest in questions related to defence, security and foreign affairs. He has also travelled widely and has played an active role in parliamentary associations.

I want to offer my sincere congratulations to Senator Prud'homme for this award, which he fully deserves. I also invite my hon. colleagues to join with me in paying tribute to him and recognizing his commitment.

[English]

**Hon. Gerry St. Germain:** Honourable senators, I also wish to pay tribute to my colleague, who sits here as an independent, appointed by the Right Honourable Brian Mulroney. I can assure every senator in this place that sitting next to this man is a true

inspiration of what a parliamentarian should be. He is on all sides of every issue, but when he does make up his mind he is generally on the right side. He has helped many of us as young parliamentarians. When I came to the other place, he was sitting across the way from me, but he never hesitated in sharing his experiences and offering guidance.

[Translation]

Not bad for a Metis. The work of my colleague Marcel Prud'homme is remarkable. I would like to congratulate him and express my good wishes to him.

• (1340)

## MR. JEAN PEDNAULT

**Hon. Pierrette Ringuette:** Honourable senators, I want to mark the 15-year transplant anniversary of a personal friend and individual who is well loved and respected throughout the Madawaska area. On October 17, our favourite journalist, Jean Pednault, will celebrate the 15th anniversary of his heart transplant in Ottawa. Fifteen years ago, many people were praying for our friend as he waited for his new heart.

As the saying goes: one man's joy is another man's sorrow. A 24-year-old Toronto man lost his life in an accident, but gave life back to our friend in a true scientific and medical miracle. I want to take this opportunity to encourage all Canadians to sign their donor card.

Our brave Jean Pednault, a native of beautiful Quebec City, has been a proud Madawaskan and a Brayon by choice for the past 34 years. Being a journalist has allowed him to get to know and understand the locals and their daily lives, which have been the subject of his numerous articles and editorials. He has always shown great interest in the political issues of all parties and levels of government, without revealing his own preferences. As a Liberal, I consider him to be a Liberal too, although others say he is apolitical. One thing is certain: this journalist has always known the difference between politics and pure and simple partisanship.

In closing, I want to join Jean, who is in Ottawa today for his annual medical check-up, his wife Ruth, his children, grandchildren and all the inhabitants of the Madawaska, in celebrating the 15th anniversary of his heart transplant. I wish him many more years with those he loves with all his heart.

## INTERNATIONAL DAY OF OLDER PERSONS

**Hon. Marisa Ferretti Barth:** Honourable senators, last Wednesday was International Day of Older Persons. This day, currently celebrated worldwide on October 1, fosters international public awareness of the important social role of seniors and the benefits of intergenerational respect and support.

By designating a special day for seniors, we not only recognize their contribution to society, but also draw special attention to aging.

There are many reasons to celebrate this day. It is first and foremost an opportunity to raise public awareness of the important and meaningful role seniors play in our lives and in society.

They are our living memory and, through their stories and experiences, they help us to discover our history and realize how far Canada has come over the centuries. This helps us greatly to prepare for the future.

Honourable senators, golden years and lack of activity are not synonymous. Quite the contrary. Many seniors remain very active after retirement and accomplish great things.

Many care for a relative, seniors and the sick. They also develop a privileged relationship with the young, a relationship based on patience and indulgence, which is often of great help to the children's parents. In fact, seniors are the most extensively involved in volunteer work on an everyday basis.

However, growing old brings its share of inconveniences. While the quality of life and health of seniors have considerably improved in recent years, many seniors are struggling with serious health problems and experiencing loneliness, isolation or extreme poverty. This day is an opportunity to raise awareness of this situation, to ensure that these persons are not forgotten.

• (1350)

## ROUTINE PROCEEDINGS

### PUBLIC SAFETY BILL, 2003

#### FIRST READING

The Hon. the Speaker *pro tempore* informed the Senate that a message had been received from the House of Commons with Bill C-17, An Act to amend certain Acts of Canada, and to enact measures for implementing the Biological and Toxin Weapons Convention, in order to enhance public safety.

Bill read first time.

The Hon. the Speaker *pro tempore*: Honourable senators, when shall this bill be read the second time?

On motion of Senator Robichaud, bill placed on the Orders of the Day for second reading two days hence.

[English]

## OFFICIAL LANGUAGES

### STUDY OF FRENCH-LANGUAGE BROADCASTING IN FRANCOPHONE MINORITY COMMUNITIES— NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO EXTEND DATE OF FINAL REPORT

Hon. Rose-Marie Losier-Cool: Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That, notwithstanding the Order of the Senate adopted on April 29, 2003, the date for the final report by the Standing Senate Committee on Official Languages in its study of provision of and access to French-language broadcasting in francophone minority communities be extended from October 22, 2003, to December 12, 2003.

## SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

### NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO MEET DURING SITTING OF THE SENATE

Hon. Marjory LeBreton: Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That the Standing Senate Committee on Social Affairs, Science and Technology have power to sit at 3:30 p.m. on Wednesday, October 22, 2003, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

[Translation]

## RULES, PROCEDURES AND THE RIGHTS OF PARLIAMENT

### NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY FOLLOW-UP PROCEDURE TO PETITIONS

Hon. Jean-Robert Gauthier: Honourable senators, I give notice that on Thursday, October 9, 2003, I will move:

That the Standing Committee on Rules, Procedures and the Rights of Parliament be authorized to study and report on, before November 28, 2003, the procedure that the Senate should adopt for following up on petitions tabled in the Senate Chamber.

## LEGAL AND CONSTITUTIONAL AFFAIRS

### NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY SECTION 16 OF CONSTITUTION ACT, 1867

Hon. Jean-Robert Gauthier: Honourable senators, I give notice that on Thursday, October 9, 2003, I will move:

That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to study and report on, before November 28, 2003, the scope of section 16 of the Constitution Act, 1867, which designates Ottawa as the seat of government of Canada.



[English]

## OFFICIAL LANGUAGES

### BILINGUAL STATUS OF CITY OF OTTAWA— PRESENTATION OF PETITION

**Hon. Jean-Robert Gauthier:** Honourable senators, pursuant to rule 4(h), I have the honour to table petitions signed by another 2,000 people requesting that Ottawa, the capital of Canada, be declared a bilingual city and the reflection of the country's linguistic duality.

The petitioners pray and request that the Parliament of Canada consider the following:

That the Canadian Constitution provide that English and French are the two official languages of our country and have equality of status and equal rights and privileges as to their use in all institutions of the Government of Canada;

That section 16 of the Constitution Act, 1867 designates the City of Ottawa as a seat of the Government of Canada;

That citizens have the right in the national capital to have access to the services provided by all institutions of the Government of Canada in the official language of their choice, namely English or French;

That Ottawa, the capital of Canada, has a duty to reflect the linguistic duality at the heart of our collective identity and is characteristic of the very nature of our country.

Therefore, your petitioners ask Parliament to confirm in the Constitution of Canada that Ottawa, the capital of Canada, is officially bilingual, pursuant to section 16 of the Constitution Act, from 1987 to 1982.

## QUESTION PERIOD

### SOLICITOR GENERAL

#### UNITED STATES—CANADIAN CITIZEN DEPORTED TO SYRIA—INVOLVEMENT OF SECURITY INTELLIGENCE SERVICES

**Hon. Consiglio Di Nino:** Honourable senators, my question is for the Leader of the Government in the Senate. I wish to return to the Maher Arar case. As we know, the Solicitor General has ruled out an investigation of the RCMP's role in this fiasco, even though Mr. Gar Pardy, a well-respected senior foreign affairs official, stated that U.S. officials, including Secretary of State Colin Powell, has suggested that the Americans got information from a security source from Canada. To add to that, it was reported in *The Globe and Mail* today that perhaps Ottawa is resisting an inquiry into the Arar case because it knows its own backyard is far from clean.

Former Liberal cabinet minister Diane Marleau said that the Mounties might be lying to Mr. Easter. She said: "This case smells bad." Could the minister tell us why the Solicitor General is blocking an investigation into this affair?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I indicated yesterday and I will indicate again today: We are dealing with an operational matter of the RCMP and I will not comment further.

**Senator Di Nino:** Honourable senators, this case certainly casts a dark shadow over our security and police institutions. The question that we should be asking ourselves is this: Should we not know if any of our security intelligence services, whether it be the Canadian Security Intelligence Service, CSIS, the Communications Security Establishment or other security and intelligence entities, has provided any information on this matter? Is this not something that Parliament and, indeed, the people of this country are entitled to receive? If so, would the government leader not agree that an investigation would be salutary, useful and good in clearing up some of this mess?

**Senator Carstairs:** As the honourable senator knows, there are review mechanisms both with the RCMP and with CSIS. Those review measures have been put in place by Parliament. Those bodies will ensure that our forces, whether they be security forces or police forces, are performing their jobs appropriately.

**Senator Di Nino:** Would the minister agree that we should recommend that the Canadian Intelligence Review Committee should be asked to get involved in this matter?

**Senator Carstairs:** The review committee of CSIS is involved on an ongoing basis in ensuring that this agency carries out its responsibilities appropriately.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators will recall that when Parliament, including this house, adopted the legislation that set in place the Canadian Security Intelligence Review Committee, a very select group of Canadians formed the committee. Indeed, they were all sworn in as members of the Privy Council for a number of reasons, including that they would come under the Official Secrets Act. In that legislation as well, honourable senators will recall that Parliament set up the Canadian Security Intelligence Review Committee because Parliament had given to CSIS powers that abrogate the human rights of Canadians.

We are in the public forum in this instance, and there is a question as to whether the rights of a Canadian citizen have been abridged with the collaboration of officials of Canada. Therefore, rather than being passive as far as the responsibilities of the Canadian Security Intelligence Review Committee are concerned, will the government not make a request of that committee to look at whether the rights of Mr. Arar were infringed by CSIS in an inappropriate way?

**Senator Carstairs:** Honourable senators, the review committee, which is made up of distinguished persons from across this country, including a former premier of the Province of Manitoba, will conduct their affairs as they see appropriate.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, what is the difference between making public the fact that former Prime Minister Mulroney was being investigated by the Royal Canadian Mounted Police — and the publicity around that investigation was not discouraged by the government — and not admitting or denying that an investigation of the same type, an operational one, may or may not be taking place in the case that Senator Di Nino raised?

• (1400)

**Senator Carstairs:** Honourable senators, it is not appropriate for the Government of Canada to discourage or encourage the activities of the RCMP.

**Senator Lynch-Staunton:** Why is it in the interests of the Liberal Party to gloat over an investigation that led nowhere and for which it has yet to apologize and yet refuse to answer that this more important investigation may or may not be taking place?

**Senator Carstairs:** The honourable senator cannot find any instance in which a member of the cabinet took any pleasure out of what was happening to the former Right Honourable Prime Minister, certainly not from me.

**Senator Lynch-Staunton:** Honourable senators, I refer the Leader of the Government to the transcript of the press conference that was given jointly with the RCMP and Messrs. Herb Gray and Allan Rock, who were in the cabinet at that time, at which they agreed to a settlement with Mr. Mulroney. At the same time, however, Mr. Rock — and I will be careful in my interpretation of his expression — said, without sadness, that the RCMP investigation was ongoing.

**Senator Carstairs:** The interpretation of the honourable senator that the investigation was ongoing I do not think in any way would have indicated that anyone took pleasure in the fact that such an investigation was going on.

**Senator Lynch-Staunton:** Pleasure or not, the point is that, at the time, the government admitted loudly that an RCMP investigation was going on — an investigation of an operational nature. In this case, is a similar investigation of an operational nature going on? Why admit in one case and not admit or deny in the other?

**Senator Carstairs:** I indicated at the beginning of this questioning that I would not comment on the RCMP operational policies and matters, and I will not.

## HEALTH

### REPORT OF NATIONAL ADVISORY COMMITTEE ON SARS AND PUBLIC HEALTH

**Hon. Wilbert J. Keon:** Honourable senators, my question is for the Leader of the Government in the Senate. Yesterday, the National Advisory Committee on SARS and Public Health, headed by Dr. David Naylor, released a report entitled "Learning from SARS." It had harsh words for the way in which the crisis

was handled, saying that it was marked by a lack of leadership or collaboration between federal and provincial health authorities, and a lack of funding and manpower due to cuts in the area of public health care.

The report states that Health Canada was "largely invisible on the front lines." The most serious assertion the report makes is that despite all that has happened, Canada remains unprepared for another outbreak. What steps will the federal government now take in working with its provincial and territorial partners to ensure a more efficient and timely response to future national public health emergencies?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, the Honourable Anne McLellan, the Minister of Health, has indicated that it is essential that action be taken quickly on Dr. Naylor's report. She has accepted the recommendations. Clearly, all levels of government will want to study them in more detail.

There is now an attitude at both the federal and provincial level — and hopefully at all provincial levels — that we cannot allow another lack of communication as identified by Dr. Naylor.

### NATIONAL PUBLIC HEALTH EMERGENCIES— RECOMMENDATIONS OF EARLIER REPORT

**Hon. Wilbert J. Keon:** Honourable senators, Dr. Naylor stated that most of the recommendations made in the report were actually made in a federally commissioned report almost 10 years ago. The Lac Tremblant declaration of 1994 advised speeding up the transfer of information between federal and provincial health authorities, improving disease surveillance, setting priorities and how to prepare for new threats, improving public health communications in a crisis, and forming partnerships between governments and public health agencies. Could the Leader of the Government in the Senate tell us why the recommendations of this earlier report were never implemented?

**Hon. Sharon Carstairs (Leader of the Government):** I think it was for the very simple reason that no one thought there was an urgency to this matter. Now that we have experienced a SARS outbreak, which I think brought everyone to attention about the state of public health in this country, there will be the appropriate responses.

## VETERANS AFFAIRS

### VETERANS INDEPENDENCE PROGRAM— ENTITLEMENT TO WIDOWS

**Hon. Michael A. Meighen:** Honourable senators, I am sure you were all as gratified as I was to learn that the Prime Minister has decided to review the decision that arbitrarily left 23,000 war veterans' widows without lifetime coverage under the Veterans Independence Program. According to press reports, a senior government official has confirmed that relief may soon be in sight for those widows who are now barred from the program. They were barred for no reason other than the fact that they were not in receipt of such benefits at the time the decision was made to offer lifetime extensions.



Those who were in receipt of such benefits under the old one-year program were the only ones who qualified for the lifetime extension. A decision was made in May of this year whereby if one widow's benefits under the old program ran out in April while another one ran out in June, the latter qualified for benefits while the former did not.

My question is to the Leader of the Government in the Senate, who seemed quite receptive when I raised this matter the first time and whose eloquence no doubt caused the change of heart in government circles. Can she tell us when "soon" is? Can she provide us with a date when those excluded widows might expect some relief? Failing that, can she explain why the government is so reluctant to set a date?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, the amount of money involved is much more than was originally considered, but I can confirm for the honourable senator that an active review is ongoing.

While I am on my feet, and in response to a question the honourable senator asked last week with respect to wreaths, I am informed that each senator's office will be contacted. Should senators wish a wreath to place before a cenotaph in their home community, one will be made available to them.

**Senator Meighen:** I thank the honourable leader for that information.

Honourable senators, I noticed that the Leader of the Government in the Senate was unable to answer my question as to when "soon" would be. I trust she will advise us at the earliest opportunity, hopefully before this place is no longer sitting.

## THE ENVIRONMENT

### REPORT OF COMMISSIONER OF THE ENVIRONMENT AND SUSTAINABLE DEVELOPMENT

**Hon. W. David Angus:** Honourable senators, for the second time in two years I raise an issue on the report of the Commissioner of the Environment and Sustainable Development. In her report this week, Johanne G  linas, Canada's Commissioner of the Environment and Sustainable Development, expressed concern about the glaring gap between the federal government's commitments to the environment and its actual performance on the subject. In fact, she used a special term for this government's record on the environment, stating that the government has an environmental deficit. She said:

Good intentions are not enough. Making commitments to the environment and sustainable development is important. It's even more important to meet those commitments...

Would the Leader of the Government in the Senate please tell us what the government plans to do about this environmental deficit?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, one of the things that the government has done, something in which we take great pride, is to have signed the

Kyoto Protocol and to put into place a plan whereby Canada can meet those targets. There have also been specific contributions. For example, \$7 million of new funds over the next five years have been dedicated to a nationally coordinated departmental science program to improve our understanding of the environmental presence. The last budget began to make substantial contributions to the environment.

Is it enough to meet all the desires of the commissioner? No, and that is good because she will continue to keep our nose to the wheel, so to speak, and ensure that we are more receptive to her reports.

## HEALTH

### REPORT OF COMMISSIONER OF THE ENVIRONMENT AND SUSTAINABLE DEVELOPMENT— PESTICIDE REVIEW REGIME

**Hon. W. David Angus:** Honourable senators, I would like to follow up on a particularly serious matter concerning the weaknesses, as the commissioner called them, in the government's management of pesticides.

• (1410)

Even though this is the fourth time since 1998 that the commissioner has raised the issue of these weaknesses in the federal pesticides management regime, she was perturbed that the government still cannot ensure that the older pesticides we use in this country are safe. Could the Leader of the Government in the Senate please explain why this is case?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, unfortunately the problem with many of the pesticides is that they were not subject to testing prior to 1994. That testing has gradually been taking place. There is no point denying that we have been and are still slow in our examination of some of these pesticides. The commissioner has taken us to task on just that. Legislation passed in 2002 did provide for more staffing for that particular regulatory agency. I hope that when she next reports, there will be a positive note that we are making more progress than we have made up this point.

**Senator Angus:** Honourable senators, the issue of information management on pesticides was also raised several times in the commissioner's chapter on pesticides. For instance, in 1994, the government promised to set up a database on pesticide use to support better targeting of research, monitoring and compliance activities. To date, alas, the database is not yet in place. Does the Leader of the Government in the Senate have any information on when or whether this database will be put in place?

**Senator Carstairs:** My information is that the monies that were afforded in the last budget and the passage of the act will make it possible for that database to be up and running. Exactly when that will happen, I do not know but, hopefully, it will be sooner rather than later.

## NATIONAL DEFENCE

AFGHANISTAN—DEATH OF TWO SOLDIERS—  
SUITABILITY OF UNARMoured VEHICLES—  
RESIGNATION OF MINISTER

**Hon. J. Michael Forrestall:** Honourable senators, yesterday, the Leader of the Government, in response to some questions I was asking about vehicles being used in Afghanistan by Canadian Forces, indicated to me, at page 2021:

Honourable senators, it is the view of the military that they now have safe, adequate and appropriate equipment.

Consider this in light of the resignation of General Cameron Ross, the Director General of Peacekeeping, over Canada's planned mission to Afghanistan and over other related questions having to do with safety and adequacy of equipment; the fact that our American allies told us not to go with inadequate equipment; the fact that these vehicles are about to be replaced with God only knows what; and the fact that now the Government of Canada, we are told, has instructed its troops not to use the light utility vehicle both inside and outside certain lines of demarcation in that country.

I pose my question again to the Leader of the Government against the background of the Minister of National Defence's clear undertaking that he would step aside if the equipment sent for Canadian troops was less than adequate. Has the Minister of National Defence yet tendered his resignation, or has he discussed the matter with the Prime Minister?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, he has not tendered his resignation, nor should he have tendered his resignation. As you know, decisions on how the operation is conducted are made by the officers in the field. They have at their disposal a number of options. When they took into consideration yesterday that apparently this may have been a terrorist attack — they have not come to that conclusion, but they think that may have been the case — they started taking different precautions than they were taking earlier. We must put our faith and confidence in the officers in charge of the Kabul mission because they, and more importantly the troops, are doing an excellent job.

AFGHANISTAN—DEATH OF TWO SOLDIERS—  
ATTENDANCE OF MINISTER AND CHIEF  
OF THE DEFENCE STAFF AT FUNERAL

**Hon. J. Michael Forrestall:** Honourable senators, can the minister indicate whether or not this whole question has anything to do with the most regrettable, and I think unprecedented, situation where the senior military officers directly involved requested the Chief of the Defence Staff and the Minister of National Defence not to appear at yesterday's services?

**Hon. Sharon Carstairs (Leader of the Government):** Absolutely not. As honourable senators know, the Prime Minister of Canada and the Minister of Defence were in Petawawa when the two

soldiers were returned to Canada and given full military honours. The decision for the Defence Minister and, indeed, the Chief of the Defence Staff not to attend the funeral yesterday was a result of the request that this be a family and community event. They did not want to turn it into a media event; they wanted it to be a family event. The Minister of Defence respected that request and did not attend.

AFGHANISTAN—DEATH OF TWO SOLDIERS—  
SUITABILITY OF UNARMoured VEHICLES

**Hon. Gerry St. Germain:** My question is also to the Leader of the Government, and it relates to the same issue. Apparently, the vehicles in which the two military personnel lost their lives, called the Iltis, will be replaced, according to Minister of National Defence, by a Mercedes vehicle. The fact is that the minister clearly stated that the vehicles being used were inadequate and that they were immediately pulling them out of service. I actually watched them on television making reference to this. Why would a minister send personnel in harm's way in inadequate vehicles? My understanding is the Mercedes vehicle will not be much better.

**Hon. Sharon Carstairs (Leader of the Government):** At no time did the Minister of Defence say that this was an inadequate vehicle.

**Senator St. Germain:** He certainly made the inference that the vehicle was inadequate under the circumstances; yet, our Armed Forces personnel are being requested to place themselves in harm's way. Senator Forrestall has clearly questioned the minister on this. I hate to think this, but I honestly do believe that there is a connection between that and the fact that the Minister of National Defence and the Chief of the Defence Staff were asked not to attend the funerals. I am certain of that. I spent a week with the military, and I know how inadequate the equipment budget is for what these people are being asked to do. I believe that this is the first indication from our military personnel and their families across this country that they have serious concerns. They are telling us, "We will do the job. We have volunteered for the job, but we need the proper equipment to do the job. We are not being properly equipped, and we are being asked to perform duties that unfairly put our lives at risk."

**Senator Carstairs:** Honourable senators, Canadian troops are never sent into the field without appropriate equipment. They have appropriate equipment, and they have a variety of different types of equipment. It is up to the officers in command to determine which piece of equipment they will utilize at any particular time.

**Senator St. Germain:** In the war in Kosovo, honourable senators, our air force had to use the Spanish air force's batteries to start our airplanes. Do not give us the guff and the malarkey that these people are properly equipped. They are not properly equipped. I spent a week in Greenwood, Nova Scotia. The forces there have to hire civilian airplanes because their equipment is inadequate to perform the functions they are expected to carry out. It is shameful.

**Senator Carstairs:** The honourable senator is wrong.



• (1420)

## FUNDS FOR NAVY

**Hon. Norman K. Atkins:** Honourable senators, my question is to the Leader of the Government in the Senate. The frigate HMCS *Toronto* is scheduled to sail to the Persian Gulf next February. Since September 11, approximately 95 per cent of Canada's sailors have served in the war on terrorism and they are now at the breaking point. They are fatigued and played out. According to reports, the deployments have shown that in addition to staffing problems, there have not been enough spare parts to keep the fleet at sea. The navy has had to scrounge parts from returning ships for those ships going out on deployment.

Could the honourable senator tell the house whether any funds are to be appropriated in the Supplementary Estimates that would be devoted solely to the Canadian navy? Could the leader assure the house that the HMCS *Toronto* will be properly staffed and equipped by next February?

**Hon. Sharon Carstairs (Leader of the Government):** In respect of specific monies for the Canadian navy, detailed information could be obtained from the National Finance Committee because it is presently undertaking its study of the Estimates.

I can assure the honourable senator that just as troops were not sent to Kabul without being properly equipped, the HMCS *Toronto* will not leave until it is properly equipped.

DEPLOYMENT OF HMCS *TORONTO*—TRANSFER OF EQUIPMENT FROM OTHER FRIGATES

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** I wonder whether the honourable leader could make inquiries and report to the house on the HMCS *Toronto*'s onboard equipment that was removed from the other 11 frigates? For example, which frigate has lost one of her radar systems to the HMCS *Toronto*? How many of the 50-calibre machine guns on the *Toronto* have always been on the *Toronto*? Of course, the ship's company will come from all the frigates. Could the house have access to a list of the equipment on HMCS *Toronto* that has come from the other 11 frigates to make it seaworthy, operational and fit to carry out its duties in the Persian Gulf?

**Hon. Sharon Carstairs (Leader of the Government):** As the honourable senator is aware, I do not have that information at my fingertips, but I will make appropriate inquiries and obtain it for him.

## HEALTH

SUPPLY OF GENERIC DRUGS  
TO AFRICAN COUNTRIES

**Hon. Marjory LeBreton:** Honourable senators, my question is for the Leader of the Government in the Senate. In response to a request made by the United Nations Special Envoy for AIDS in Africa, Stephen Lewis, the federal government has announced that it will amend our patent laws to allow generic drug companies to supply low-cost antiviral drugs to African countries. This action is possible because of an agreement reached in August by the World Trade Organization allowing impoverished countries to import generic drugs under specific circumstances. When does the government intend to propose such legislation?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, it is my understanding that the government will bring the proposed legislation forward as quickly as possible. I was pleased to read today that there is NAFTA cooperation in this effort.

UNITED NATIONS GLOBAL FUND AGAINST AIDS,  
TUBERCULOSIS AND MALARIA—  
GOVERNMENT CONTRIBUTION

**Hon. Marjory LeBreton:** Honourable senators, Mr. Lewis has again asked Western countries to honour their pledges or increase their contributions to the United Nations Global Fund Against AIDS, Tuberculosis and Malaria. The House of Commons Foreign Affairs Committee has asked the Prime Minister to triple Canada's current contribution of \$100 million. Last month, at the United Nations General Assembly special session discussing AIDS, Prime Minister Chrétien seemed to indicate that increased funding would be provided. Could the Leader of the Government in the Senate tell us if the increased AIDS funding mentioned by the Prime Minister will be directed to the global fund and, if so, what is the amount and when will the government do it?

**Hon. Sharon Carstairs (Leader of the Government):** The honourable senator is correct when she says that Canada has pledged a total of \$100 million, but it is important to realize that it is US \$100 million and not CAN \$100 million that will go to the global fund between 2001 and 2004. Thus, Canada ranks seventh among all donor countries. I understand that the honourable senator is making a plea for additional dollars, and I will certainly put that request forward on her behalf.

[Translation]

## DELAYED ANSWERS TO ORAL QUESTIONS

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I have the honour to table in this House, two delayed responses to two oral questions, one raised by the Honourable Senator Keon on September 23, 2003, concerning Canadian Institutes for Health Research funding program for middle level and senior researchers, and also a response to the oral question raised by the Honourable Senator Tkachuck on June 18, 2003, concerning pensions plans and the difference between public and private-sector surpluses.

## HEALTH

CANADIAN INSTITUTES FOR HEALTH RESEARCH—  
FUNDING PROGRAM FOR MIDDLE LEVEL  
AND SENIOR RESEARCHERS

(Response to question raised by Hon. Wilbert J. Keon on September 23, 2003.)

Since the creation of the Canadian Institutes of Health Research (CIHR) a number of federal initiatives related to health research have been implemented, such as the Canada Research Chairs program and the Canada Foundation for Innovation.

As a result, CIHR has adjusted its programs to ensure that federal research dollars do not significantly overlap and that CIHR is funding in its niche areas. Thanks to increased investments that have seen CIHR's budget double to \$617 million annually, CIHR now funds over 7,500 researchers and trainees through its operating and strategic grants.

## FINANCE

### PENSION PLANS—DIFFERENCE BETWEEN PUBLIC AND PRIVATE-SECTOR SURPLUSAGE

(Response to question raised by Hon. David Tkachuk on June 18, 2003.)

A proposed regulatory change to pension surplus rules will allow fixed cost-shared pension plans to make joint employer-employee contributions until the amount of pension surplus exceeds 25 per cent.

This change will put fixed cost-shared pension plans on a more equal footing with traditional private sector defined benefit plans. It will also allow for more stability in employee contributions and asset levels for fixed-cost shared plans, as is already permitted for traditional plans under the current surplus rules.

The difference has nothing to do with preventing businesses from "hiding" profits in pension plans. It is a structural change to put fixed cost-shared plans on a more equal footing with traditional plans for the long-term.

## ORDERS OF THE DAY

### BUSINESS OF THE SENATE

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I would like to begin with Item No. 3 under Government Business, that is, third reading of Bill C-6. We will then return to the order proposed in the Order Paper.

[English]

### SPECIFIC CLAIMS RESOLUTION BILL

#### THIRD READING—DEBATE SUSPENDED

**Hon. Jack Austin** moved the third reading of Bill C-6, to establish the Canadian Centre for the Independent Resolution of First Nations Specific Claims to provide for the filing, negotiation and resolution of specific claims and to make related amendments to other Acts, as amended.

He said: Honourable senators, on September 25, 2003, the Senate adopted a motion to refer Bill C-6, in respect of the resolution and negotiation of specific claims, back to the Standing

Senate Committee on Aboriginal Peoples for the purpose of studying the impact on Bill C-6 of the recent Supreme Court decision recognizing the Metis people as a distinct Aboriginal Nation."

The committee met on Tuesday, September 30, to hear from Mr. Allan MacDonald, Director of the Office of the Federal Interlocutor for Metis and Non-status Indians. The committee also heard from Ms. Audrey Stewart, Director General, Specific Claims, and Mr. Robert Winogron, Senior Counsel, Department of Indian Affairs and Northern Development. In brief, their evidence was that, legally, the decisions of the Supreme Court of Canada in the *Powley* and in the *Blais* cases are in no way relevant to Bill C-6, which is limited in its scope to specific claims under treaties and agreements by Indian bands as defined in clause 26 of Bill C-6.

The *Powley* and *Blais* decisions are related to the Metis claims for the Aboriginal right to hunt, in the *Powley* case, and for entitlement under resource transfer legislation, in the *Blais* case. *Powley* indicated that one specific Metis community, through the use of its hunting practices, had proven that it had retained an Aboriginal right to hunt. The case went no further. The *Blais* case found that a Metis claim to rights over resources could not be established as an Aboriginal right of that particular Metis community. Both cases were decided on narrow grounds and neither referred to the rights of status Indians.

An additional witness who appeared on October 1 was Professor Larry Chartrand of the Faculty of Law at the University of Ottawa. He is a Metis and specializes in Metis claims. Professor Chartrand acknowledged that he represented no Metis group and that he offered his personal views only. He focused on two points: first, that the Supreme Court was moving closer to the long-held historical view of the Metis that they should be defined as Indians for the purpose of section 91.24 of the Constitution Act, 1867. He believed that this was shown in the Supreme Court's acknowledgment of hunting rights in the *Powley* case. Second, he argued that as a matter of law or of policy, Bill C-6 should be amended to include the Metis so that any land claims under any agreement could be filed, and he had gave one or two examples of possible land claims.

Professor Chartrand based his legal argument on the premise that all Aboriginal communities were entitled to equal treatment. This, in my view, is highly debatable. However, he made good points in arguing that the federal policy toward Aboriginal peoples was unjust and inequitable. I believe that most members of the committee would agree with him on that issue.

• (1430)

On October 2, the committee heard from Mr. Bryan Schwartz, Special Counsel to the Assembly of First Nations. He continued their well-known opposition to Bill C-6 and read into the record a letter from Grand Chief Phil Fontaine, which continued the objection to the lack of formal recognition of the Assembly of First Nations, and the lack of an entitlement to share in the appointment process of tribunal members and others.



Of interest was the comment by Mr. Schwartz in reference to section 35 of the Constitution Act, 1982, that:

Equality does not require, or even permit in some cases, an identical treatment of different groups. Their distinctive histories, rights, interests and political choices must be taken into account in appropriate ways.

Later in his evidence, Mr. Schwartz said:

The court has acknowledged, in other words, that First Nations and Metis have, for at least some important purpose, different constitutional histories and positions. In the *Lovelace* case, the Supreme Court of Canada had recognized that the distinctive legal and social position of the First Nations means that a government can design programs in partnership with First Nations that extend to them only and do not necessarily include the Metis.

He further went on to say:

However, given the long history of justice denied to First Nations in the context of specific claims, First Nations cannot be expected to wait while yet a new process of consultation unfolds.

I should mention that Roger Jones of the Assembly of First Nations also participated with Mr. Schwartz in support of their position.

On Tuesday, October 7, Mr. Peter W. Hutchins, a lawyer with many years of experience with Aboriginal law and issues, gave the committee an overview of federal policies regarding Aboriginal peoples. He also believes that:

...the Metis people are not only Aboriginal people within the meaning of section 35 of the Constitution Act, 1982, but there is a special federal responsibility toward them by virtue of section 91.24 of the BNA Act, 1867.

The issue in all of this evidence is whether any reason in law exists which should hinder the right of Parliament to enact Bill C-6. The evidence is clear that Bill C-6 and the rights of the Metis — whatever they are and whenever they may be established — run in separate tracks.

The claims of the Metis are not to be taken as having any impact on the right of Parliament to legislate regarding status Indians. However, the Standing Senate Committee on Aboriginal Peoples takes full note of the unresolved issues regarding the Metis people, and recommends that the Government of Canada deal with those issues — and the *Powley* case — at an early time.

Let me turn back to Bill C-6. The Senate has heard from me on second reading and on debates in amendment. I will not go back over what is now on the record, except to touch again on a few key points.

Government, First Nations, the Indian Claims Commission and many others have viewed the existing specific claims process with increasing concern and the need for reform as an increasing necessity. The fact is, honourable senators, that the lack of an

independent body to deal with specific claims has not been the only problem of the present system. Another major obstacle to the resolution of specific claims is that the system is much too slow.

I am sure that all honourable senators have heard that, over the years, the backlog of outstanding specific claims has been growing steadily. Between April 1970 and June 2003, only 252 of 1,201 specific claims submitted have been settled. Currently, there are over 550 claims in various stages of review and more specific claims are being submitted every year. Honourable senators, everyone acknowledges this is an unacceptable state of affairs. It is clear that action is needed and needed now.

Honourable senators, the Standing Senate Committee on Aboriginal Peoples held hearings from April 30 to June 11 of this year. The Assembly of First Nations testified on three occasions. Government officials, First Nation representatives from organizations in communities across the country, the Indian Claims Commission and legal experts also testified.

The committee heard from First Nations witnesses that Bill C-6 does not duplicate every aspect of the draft legislation contained in the joint task force report. That task force studied the specific claims process between 1996 and 1998. The fact that its recommendations were not fully accepted by the Government of Canada was a considerable concern to the Assembly of First Nations.

Other concerns were the absence of a joint appointment process to the commission and the tribunal; the \$7-million cap on tribunal compensation awards; and the absence of a joint Canada-Assembly of First Nations review of the legislation at a later time.

The committee also heard from government witnesses of the need for fiscal responsibility when establishing a statutory compensation body such as the tribunal, and of the bill's authorization for the claim limit to be modified by regulation.

I would emphasize that the bill imposes no compensation limit through the commission process and, even more significantly, this bill and its operation is required by statute to be reviewed within three to five years of its taking effect to determine what changes ought to be made.

Honourable senators, I am reducing hours of testimony to its essence, but I would assure you that the committee assessed what it heard carefully and responsibly, and its report reflects that assessment. Honourable senators, at the end of its hearings, the committee was satisfied that Bill C-6 represents an important advance for the fair treatment of specific claims. The bill creates exactly the kind of independent, two-part structure outside the Department of Indian Affairs that was advocated by the Penner committee of 1983, by the Indian Claims Commission and many others. It will provide for finality in the settlement of certain claims.

Claimants who do not wish to be subject to the tribunal's claim limit are not obliged to go to the tribunal. Access to the courts remains open to them.

Honourable senators, another noteworthy aspect that I would mention is that, for the first time, fiduciary obligations are included among the legal obligations that may give rise to a specific claim.

I would add that, throughout its deliberations on Bill C-6, the committee also remained most mindful of concerns raised by First Nation witnesses. As a result, the committee adopted important amendments that improved Bill C-6 in a number of respects. For example, the committee raised the existing claim limit to \$10 million. It added a clause to ensure that claimants are given the opportunity to make representations to the minister with respect to appointments to the commission and the tribunal. The committee modified the bill's review clause to ensure that First Nations are entitled to make representations on the act's implementation. The committee also added a clause to ensure that the tribunal can summon witnesses and order the production of documents for claims before the commission.

Honourable senators, these are significant changes that will benefit First Nations with specific claims.

The committee also carefully considered additional points raised during its Bill C-6 hearings. It drew the following conclusions on two issues, and those are that the bill's waiver requirement, and the potential for ongoing delays in the specific claims process were of sufficient importance to merit including observations in the committee's fourth report to this chamber on June 12. I draw the attention of honourable senators to these observations, which ask the minister to pay particular attention to the matters raised in them when the review of the legislation's operation begins three years after the legislation comes into effect.

Honourable senators, it will undoubtedly be clear to you from my remarks that I consider Bill C-6 to be a work-in-progress. It has travelled a long and winding road to its introduction. However, First Nations have had their cause advanced. For the first time, there will be a statutory framework under which they can seek redress from government. This does not mean, honourable senators, that the framework is set in stone. It is just the beginning of a new era in the specific claims process. Improvements will be necessary. Our role as parliamentarians is to ensure that they do occur when the need is demonstrated.

• (1440)

Honourable senators, I feel confident that we will remain observant of the progress of Bill C-6, that we will bear in mind the issues raised in this debate and before the committee, and that we will recognize that the bill, in spite of the formal opposition of the Assembly of First Nations, advances the process of dealing with specific claims.

I ask honourable senators to support the bill.

**Hon. Gerry St. Germain:** Will the honourable senator accept questions?

**Senator Austin:** Certainly.

**Senator St. Germain:** I have two questions. The AFN, which is the representative of our First Nations at the highest level, has

posed strong opposition to various factors and they make reference to the joint task force. Why would the government at this stage, when it continually states that it wants to deal openly with Aboriginal issues, ignore this organization that I honestly believe is sincere in requesting proper representation in establishing the commissions, which appear to be merely an extension of DIAND and the ministry at the present time.

**Senator Austin:** Honourable senators, I believe that Senator St. Germain is correct in observing that the Assembly of First Nations is sincere in its representations. They participated actively in the joint task force — 1996 to 1998 — and much was agreed upon. On behalf of the Assembly of First Nations a friend of mine and of Senator St. Germain, Chief Edward John, headed that joint task force. Chief John is also a lawyer, called to the bar in British Columbia.

After the task force reported, the government had to assess the degree to which it was possible to accept its recommendations. I wish to touch on three aspects. First, the desire of the Assembly of First Nations to be treated in legislation as having a quasi-sovereignty could not be accepted by the Government of Canada. It could not, by legislation, be established as the representative of all First Nation communities, nor were the First Nation communities unanimous or even substantially in agreement that the AFN should play that particular role.

I agree with Senator St. Germain that the Assembly of First Nations does represent a substantial number of Aboriginal communities. However, it does not have the mandate to receive a legislative role from its communities, and it has not had a resolution to that effect passed by the chiefs.

Second, the Assembly of First Nations claimed the right of a negative veto with respect to appointments to the tribunal and to the centre. There is no possibility that the Government of Canada can cede that part of its jurisdiction to any organization, Aboriginal or otherwise, in circumstances of this kind. It is for government to govern and take its responsibilities before the people of the country.

With respect to the cap, the government found itself in a position where it has to control the amount of the awards that the independent tribunal might find. Therefore, it imposed a cap of \$7 million, which this Senate wishes to raise to \$10 million. The government, however, can waive the cap at any time it wishes and accept a claim for a larger amount.

Honourable senators, I could go on. Senator St. Germain and I have had many discussions on these issues, but I know he has another question and I am eager to hear it.

**Senator St. Germain:** I thank the honourable senator for his response.



My next question is in regard to the Metis. Why would we not wait? The honourable senator made reference in his intervention that the Metis issue will run on separate tracks. That is very interesting, but some of the claims that may arise from the Metis people may be in conflict by way of overlaps, or what have you, on land settlements, and most of the specific claims relate to land. Why would we not proceed with caution in view of the landmark decision of the Supreme Court of Canada regarding Metis recognition under section 35, which will at least commence serious negotiations between the interlocutor and the Metis nation?

**Senator Austin:** Honourable senators, I wish to correct an impression. Part of that impression may be in the motion that was raised on September 25.

The *Powley* case did not recognize the Metis as an Aboriginal nation. This Parliament recognized the Metis as an Aboriginal nation in 1982, with section 35. I believe that was one of the most progressive measures this Parliament has taken in many decades.

Second, the First Nations, as represented by their council — and I read the statement into the record — do not want their claims to be either retarded or to be involved in claims by other Aboriginal peoples. It was made very clear that the Inuit are in exactly the same position. They have quite a different deal from the status Indians or from the Metis. I would say that the Inuit are the most advanced in the recognition of their rights and place.

The court dealt with this issue specifically in the *Lovelace* case. The Supreme Court of Canada made it clear that the three Aboriginal groups are to be dealt with in their own history, customs and circumstances.

The situation with respect to the Metis and section 91.24 has concerned me and many people for a very long time. Many decades ago, the Government of Canada made a decision that the Metis were not to be included as Indians under section 91.24, which assigns responsibility for Indians to the federal government under the Constitution. It took litigation to include the Inuit as Indians for the purposes of the Indian Act. The Metis have pursued litigation, but that case has not come forward.

Clearly in the evidence there was total sympathy in the committee for the circumstances in which the Metis find themselves. I believe all of us on the committee, and I hope all honourable senators in this chamber, will keep high on their priority list the pressure on government to deal with the Metis issue. The *Powley* case does advance their cause in that it recognizes the Aboriginal right to hunt in a community that has exercised that right and has never given up that right.

Apart from the *Powley* case, we have another issue and that is to deal justly with the Metis.

• (1450)

**Hon. Terry Stratton:** Honourable senators, I should like to speak to Bill C-6. Is there another question?

**Hon. Charlie Watt:** Would Senator Austin be prepared to accept some questions?

**Senator Austin:** Yes.

**Senator Watt:** Honourable senators, Senator Austin told us that action is needed now. Indeed, that action is long overdue. However, I am not quite sure whether the instrument that we are dealing with today is adequate for the action that is needed now. It may not be.

Honourable senators, I should like to cover an area that Senator Austin touched upon, namely, the court actions between the federal and provincial governments from 1946 to 1949. That is when the Inuit of the North discovered that they fell under section 91.24. In those days, the Hudson Bay Company was the only instrument in the North. When the Hudson Bay Company inherited a debt of \$3,000 respecting relief that was being provided to the people in the North during the period of starvation, litigation ensued between the federal and the provincial governments. That litigation continued during the period between 1946 to 1949. It centred on the question of who had trusteeship responsibility. In 1949, the ruling finally came down. The federal government lost a court action and the provincial government won, due to the fact that the federal government has responsibility for the Aboriginal people.

There has been some uncertainty on the precise question of who comes under section 91.24. In some cases, the Inuit have been found to come under this section and in some cases it has been decided that they do not. That is obvious from the litigation back to 1970, through to the negotiations up to 1975.

Yesterday, the Standing Senate Committee on Aboriginal Peoples heard from Mr. Peter Hutchins, a knowledgeable witness who specializes in Aboriginal rights. I have known this man since he was a young man and I almost did not recognize him yesterday, because he has become very white. That does not mean he is old, it just shows that he has just been fighting uphill battles over many years in representing Aboriginal people. He is a litigator and a negotiator.

He described how Bill C-6 would infringe on Aboriginal rights. To him, it was quite clear. He believes that the ruling raised the issue of whether or not the Metis also fall under section 91.24. This matter must be rectified.

Why must we rush this bill through when we are at the stage where, perhaps very soon, we will have a new agenda? I fail to understand why we must rush this bill through.

More important, the witnesses we heard all said the same thing. Senator Austin said that action is needed now. Maybe action is needed now, but is this the right instrument that we are providing to the Aboriginal people? Will it advance the rights of the people? I do not think so. Over and over again, Aboriginal peoples have told us that this is unworkable. If it is unworkable, why do we not suspend this debate until we have an opportunity to review the entire issue of Aboriginal matters?

Senator Austin was not in attendance yesterday when Mr. Hutchins analyzed Bill C-6 as it relates to section 35 and section 91.24. We have a tendency to deal with the provisions of section 35 in isolation. As Mr. Hutchins described it, the boxes that are being created by the system are getting smaller and smaller.

Why did Senator Austin not deal with Mr. Hutchins evidence? Perhaps the honourable senator did not have access to transcripts of the meeting. I should like to hear his opinion of what Mr. Hutchins said yesterday.

**Senator Austin:** Honourable senators, in specific answer, I have studied the transcript. I have read the transcript of Mr. Hutchins' evidence three times. I quoted from him, and I think I made an honest representation of the key point that he gave the committee.

For the rest, obviously Senator Watt and I agree on one thing: We disagree on the importance of moving forward with Bill C-6. Senator Watt has shown skilful parliamentary tactics in expressing his view, and I give him credit for that. I wish to congratulate the honourable senator on his speech.

**Senator Watt:** Is there any real substance to that intervention?

**Senator Austin:** I do not know what the honourable senator means by "real substance." I have done my best to explain the bill and the work of the committee. I look forward to whatever participation Senator Watt is permitted to make under our rules. I can assure the honourable senator that I will listen with the greatest of care to anything that he may have to say about Bill C-6.

**Senator Watt:** I thank the honourable senator.

**Senator Stratton:** Honourable senators, regarding Bill C-6, the specific claims bill, on September 23, this chamber referred the bill back to the Standing Senate Committee on Aboriginal Peoples for the purpose of studying the impact upon Bill C-6 of the recent Supreme Court decision recognizing the Metis people as a distinct Aboriginal nation. To that end, the standing committee heard witnesses who gave their opinions on the application of the Supreme Court decision with respect to this bill.

The government is of the opinion that the *Powley* decision has no bearing on the legislation currently before us. In its estimation, the *Powley* case solely concerns Aboriginal rights, while Bill C-6 deals with specific claims of Aboriginal rights. This is a narrow perspective to take with regard to the impact of this case. In the words of one witness, the *Powley* case has given us a chance to be a little more creative. This decision may very well affect any policy or legislation that the federal government chooses to initiate in the future which draws distinctions between the Metis and other Indian communities.

Paragraph 38 of the decision states that the Metis peoples possess full status as distinctive rights bearing peoples whose own integral practices are entitled to constitutional protection under section 35(1). The wording is very clear, as are the implications.

[ Senator Watt ]

Honourable senators, I believe that the *Powley* case is the first of several building blocks in defining the place of Metis peoples in Canada, in much the same way that the *Guerin* case was the first block for the First Nations.

The problem we have and had in committee was that many witnesses did not want to appear simply because the Supreme Court decision was so very recent.

Debate suspended.

[Translation]

## BUSINESS OF THE SENATE

**The Hon. the Speaker pro tempore:** Honourable senators, it is now 3 p.m., and pursuant to the order adopted by the Senate on October 7, 2003, I am obliged to interrupt the proceedings of the Senate in order to put the question on Senator Kinsella's subamendment with respect to Bill C-25.

[English]

The vote will take place at 3:30 p.m. Please call in the senators.

• (1530)

## PUBLIC SERVICE MODERNIZATION BILL

### THIRD READING— MOTION IN SUB-AMENDMENT NEGATIVED

On the Order:

Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Harb, for the third reading of Bill C-25, to modernize employment and labour relations in the public service and to amend the Financial Administration Act and the Canadian Centre for Management Development Act and to make consequential amendments to other Acts,

And on the motion in amendment of the Honourable Senator Beaudoin, seconded by the Honourable Senator Comeau, that the Bill be not now read a third time but that it be amended in clause 12, on page 126, by replacing lines 8 to 12 with the following:

**"30.** (1) Appointments by the Commission to or from within the public service shall be free from political influence and shall be made on the basis of merit by competition or by such other process of personnel selection designed to establish the relative merit of candidates as the Commission considers is in the best interests of the public service.

(1.1) Despite subsection (1), an appointment may be made on the basis of individual merit in the circumstances prescribed by the regulations of the Commission.

(2) An appointment is made on the basis of individual".



On the subamendment of the Honourable Senator Kinsella, seconded by the Honourable Senator Stratton, that the motion in amendment be amended:

(a) by replacing the words "by replacing lines 8 to 12" with the following:

"(a) by replacing lines 8 to 11"; and

(b) by replacing the words "(2) An appointment is made on the basis of individual" with the following:

"(b) by replacing lines 26 to 29, with the following:

"may be identified by the deputy head,

(iii) any current or future needs of the organization that may be identified by the deputy head, and

(iv) achieving equality in the workplace to correct the conditions of disadvantage in employment experienced by persons belonging to a designated group within the meaning of section 3 of the *Employment Equity Act*, so that the employer's workforce reflects their representation in the Canadian workforce."

Motion in sub-amendment negated on the following division:

#### YEAS

##### THE HONOURABLE SENATORS

Angus	Kinsella
Atkins	Lawson
Beaudoin	LeBreton
Cochrane	Lynch-Staunton
Comeau	Meighen
Di Nino	Murray
Doody	Nolin
Forrestall	Prud'homme
Gustafson	Robertson
Johnson	St. Germain
Kelleher	Stratton
Keon	Tkachuk—24

#### NAYS

##### THE HONOURABLE SENATORS

Adams	Hubley
Austin	Jaffer
Bacon	Joyal
Baker	Kirby
Biron	Kolber
Bryden	LaPierre
Callbeck	Lapointe
Carstairs	Léger
Chalifoux	Losier-Cool
Chaput	Maheu
Cook	Mahovlich
Cools	Massicotte
Corbin	Moore
Cordy	Morin
Day	Pearson

De Bané  
Downe  
Fairbairn  
Ferretti Barth  
Fraser  
Furey  
Gauthier  
Gill  
Graham  
Harb  
Hervieux-Payette

Phalen  
Plamondon  
Poulin  
Ringuette  
Robichaud  
Roche  
Sibbeston  
Sparrow  
Stollery  
Watt  
Wiebe—52

#### ABSTENTIONS THE HONOURABLE SENATORS

Nil.

#### SPECIFIC CLAIMS RESOLUTION BILL

##### THIRD READING—DEBATE CONTINUED

On the Order

Resuming debate on the motion of the Honourable Senator Austin, seconded by the Honourable Senator Joyal, for the third reading of Bill C-6, to establish the Canadian Centre for the Independent Resolution of First Nations Specific Claims to provide for the filing, negotiation and resolution of specific claims and to make related amendments to other Acts, as amended.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators will recall that before the vote Senator Stratton had begun to speak. He was about three minutes into his 15-minute address. For reasons that honourable senators will understand, he plans to attend the funeral of a distinguished Canadian in Winnipeg and has had to catch a flight.

I wish to move the adjournment of the debate so that he can complete his speech at a later time.

**The Hon. the Speaker *pro tempore*:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I am not in agreement with this motion. We have brought this matter back now for the second time. The first flight to Winnipeg is at 5:40 p.m. It is now 3:35 p.m. If the reason that Senator Stratton cannot speak is because he has gone to catch a flight, I am afraid that reason is not valid.

**Senator Forrestall:** You have to be there an hour before the flight.

**Senator Kinsella:** Honourable senators, I do not know the schedule of all the flights of Air Canada or whatever airline is being used. I am simply reporting to the house that Senator Stratton advised me that he had to leave for the airport to go to Winnipeg to attend the funeral of a distinguished Canadian to whom tributes have been rendered in this place.

Senator Stratton began his speech. Had there not been so many questions and such long answers from the last senator who spoke, no doubt his speech would have been completed.

All honourable senators know as much about it as I do.

I move the adjournment in the name of Senator Stratton so that he can complete his speech.

**Senator Carstairs:** Could I ask if another senator is prepared to speak on Bill C-6? If that is the case, we could hear from that honourable senator.

**Senator Kinsella:** I have absolutely no objection to that, so long as I can preserve the 12 minutes remaining for Senator Stratton. I believe what the Honourable Leader of the Government is requesting is reasonable. If other honourable senators wish to participate in the debate, that is fine, so long as Senator Stratton can complete his speech.

**Hon. Anne C. Cools:** Honourable senators, there is something very wrong here. The question before us is the motion by Senator Kinsella to adjourn debate in the name of Senator Stratton. We cannot ignore it, hop along and go on to another speaker.

Senator Kinsella moved a motion. That motion and that question should be put to the chamber.

**The Hon. the Speaker pro tempore:** Honourable senators, is the house ready for the question?

**Some Hon. Senators:** Question!

**The Hon. the Speaker pro tempore:** It is moved by the Honourable Senator Kinsella, seconded by the Honourable Senator Lynch-Staunton, that the debate be adjourned in the name of Senator Stratton until the next sitting of the Senate

Is it your pleasure, honourable senators, to adopt the motion?

**Some Hon. Senators:** No.

**Some Hon. Senators:** Yes.

**The Hon. the Speaker pro tempore:** Will those honourable senators in favour of the motion please say "yea"?

**Some Hon. Senators:** Yea.

**The Hon. the Speaker pro tempore:** Will those honourable senators opposed to the motion please say "nay"?

**Some Hon. Senators:** Nay.

**The Hon. the Speaker pro tempore:** In my opinion, the "nays" have it.

*And two honourable senators having risen:*

**The Hon. the Speaker pro tempore:** Call in the senators.

There will be a one-hour bell. The vote will be taken at 4:40 p.m.

• (1640)

Motion negated on the following division:

#### YEAS THE HONOURABLE SENATORS

Adams  
Atkins  
Beaudoin  
Biron  
Comeau  
Cools  
Di Nino  
Forrestall  
Gill  
Gustafson  
Kelleher

Keon  
Kinsella  
LeBreton  
Lynch-Staunton  
Massicotte  
Nolin  
Prud'homme  
Robertson  
St. Germain  
Tkachuk  
Watt—22

#### NAYS THE HONOURABLE SENATORS

Austin  
Bacon  
Baker  
Bryden  
Callbeck  
Carstairs  
Chalifoux  
Chaput  
Cook  
Corbin  
Cordy  
Day  
De Bané  
Downe  
Fairbairn  
Fraser  
Gauthier  
Graham

Harb  
Hubley  
Jaffer  
Joyal  
Kolber  
LaPierre  
Léger  
Losier-Cool  
Maheu  
Mahovlich  
Moore  
Pearson  
Ringuette  
Robichaud  
Sibbeston  
Stollery  
Wiebe—35

#### ABSTENTIONS THE HONOURABLE SENATORS

Hervieux-Payette  
Lavigne

Sparrow—3

**The Hon. the Speaker pro tempore:** Honourable senators, I declare the motion defeated and we will resume debate.

**Hon. Gerry St. Germain:** Honourable senators, I move adjournment of the debate, seconded by Senator Prud'homme.



[Translation]

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I saw that Senator Gill was prepared to speak, and it is customary to allow a senator to continue the debate before hearing a motion for adjournment.

**Senator St. Germain:** I agree.

[English]

**Senator Kinsella:** Honourable senators, on the point raised by the Deputy Leader of the Government, the rules provide that, upon defeat of a motion like that, an intervening matter must occur. Therefore, the intervening matter, I take it, will be the speech from Senator Gill.

• (1650)

[Translation]

**Hon. Aurélien Gill:** Honourable senators, since Bill C-6 was referred to the Standing Committee on Aboriginal Peoples, on September 28, we have heard from witnesses, including Peter Hutchins, as an individual, and representatives of the First Nations. The latter appeared on behalf of the new National Chief, Phil Fontaine.

In the Senate prior to September 28 during the debate on Bill C-6, the Honourable Charlie Watts moved that this bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs. Following a discussion, this amendment was changed. Some senators had recommended that the bill be referred to the Standing Committee on Aboriginal Peoples rather than the Standing Committee on Legal and Constitutional Affairs. That is what we did.

In the meantime, the *Powley* case was raised in the Senate. In light of the debate on the *Powley* affair, an amendment was moved. Prior to this, honourable senators will remember that there were numerous discussions on the specific claims by Aboriginal peoples. Coincidentally, the *Powley* case occurred, and the debate focussed solely on this case.

We have heard witnesses who discussed not only the *Powley* case, but also territorial claims in general, with respect to the First Nations. Again, I said this before and will repeat it, the vast majority of witnesses, both Aboriginal and non-Aboriginal, wanted the bill to be simply dropped or significantly amended. I repeat this, because it is important to know that, in this country, democracy works some of the time, but not all of the time.

The vast majority of First Nations people wanted to see major changes, to see the bill dropped, because they did not believe it met the objectives of the First Nations.

People were wondering whether the new National Chief, Phil Fontaine, was saying the same thing and going in the same direction as the previous National Chief, Matthew Coon Come. It

became clear in committee that National Chief Phil Fontaine is urging the government not to pass this bill, but rather to discuss it further. Peter Hutchins, an expert, told us: "Wait, take your time; there are some major issues in this bill."

With your permission, I would like to read a letter tabled with the Committee on Aboriginal Affairs. I appreciate that you may not understand the context because you were not at the committee meeting. I regret that the sponsor of the bill is not here on this occasion. He could have helped explain the context.

This letter is addressed to the chair of the committee and signed by Phil Fontaine. It reads, and I quote certain excerpts:

[English]

For several years the AFN and federal officials participated in a Joint Task Force ("JTF") to consider the requirements of an effective specific claims body. In an unprecedented spirit of partnership, the JTF produced a model of a sound and effective system. The exercise should have stood as a landmark in cooperative policy development.

Instead, the federal government rejected the model suggested by the JTF and terminated consultation. It produced a Bill that continues, rather than resolves, the problems of the past, including delay and conflict of interest on the part of the federal government.

It is not too late. Despite all that has happened, a federal government that wishes to return to the constructive, mutually-respectful and results-oriented dialogue will find a willing partner in the AFN.

The federal government still has a chance to meet with the AFN, restore the spirit of partnership, and work together to produce a specific claims Bill that will benefit all Canadians.

[Translation]

I would like to add the following. Many people were wondering whether the Assembly of First Nations was only concerned about itself, to the exclusion of all others.

[English]

First, the AFN supports reasonable and just responses to the just claims of all Aboriginal peoples, including the Inuit and the Metis.

[Translation]

This is a letter signed by Phil Fontaine, National Chief of the Assembly of First Nations. Some people wondered whether the present chief supported the positions of his predecessor, Matthew Coon Come. The four-page letter is very clear and has been transmitted to the Aboriginal Affairs Committee for their records. I suggest you refer to it if you wish to know more.

Here is what I really want to know: when are we going to start to establish a real partnership? Why this system? Why would we not be allowed to have such a partnership, not just for the First Nations, but for all Canadians? I know that everyone is tired of conflict, and many people wonder what can be done. There is one thing that can be done for certain: to show trust, as we normally should. You must trust the leaders of the First Nations, regardless of what is said about their reputations.

I was a chief for ten years. For several years, I was responsible for Indian and Northern Affairs in Quebec. During that entire time, I was a manager for the Department of Indian and Northern Affairs. I never found a single chief who was guilty of any type of fraud. I am not saying that there were not any problems in management; everybody makes mistakes. I did not see a single chief during that whole time, and I know them, convicted or accused of being dishonest by the Aboriginal population. Today, people continue to pass judgment.

I digress. There seems to be a general sense that Aboriginals or Indians are unable to make their own decisions and that someone has to do this for them. Certain senators have told me this. If we have reached that point, are we still living in a democracy? Allowing Aboriginals to resolve their own problems and find their own solutions would benefit everyone in Canada.

In conclusion, honourable senators, I would like to move an amendment to the bill.

#### MOTION IN AMENDMENT

**Hon. Aurélien Gill:** Honourable senators, I move:

That Bill C-6 be not now read the third time, but that it be read a third time this day six months hence.

**The Hon. the Speaker *pro tempore*:** Honourable senators, the Honourable Senator Gill, seconded by the Honourable Senator Watt, moved:

That Bill C-6 be not now read the third time, but that it be read a third time this day six months hence.

• (1700)

**Hon. Marcel Prud'homme:** The honourable senator has said that he was, in a prior life, responsible for the Department of Indian Affairs and Northern Development. So that the senators can grasp the significance of his experience, could he repeat that part of his previous and more recent responsibilities? That would give us a better idea of his knowledge and for those of us with less knowledge, we would learn something. Perhaps we will be more intelligent.

**Senator Gill:** Honourable senators, very briefly, of course I cannot tell you everything I have done; I am getting to a certain age. I can say that I have spent my life in the Aboriginal world and I was born in an on-reserve community; I still live there; and I shall die there, too.

I was a chief for a number of years. I was a teacher in the Indian schools, at first. I was the Director General, in the Department of Indian and Northern Affairs, for all of Quebec. Senator Watt and

the others will remember. I was responsible for managing the Department of Indian Affairs in Quebec. And, of course, I was on the Indian Specific Claims Commission for some years. I had to resign when I was appointed to the Senate.

**Hon. Pierre Claude Nolin:** Honourable senators, in light of what Senator Gill has told us, we see that he is almost an expert witness in this field.

The First Nations Chief, Mr. Fontaine, has said that there was a problem of conflict of interest and that it was not yet settled. I remember having asked questions of the sponsor of the bill, before we decided to refer it to the Aboriginal Peoples Committee, precisely because of this conflict of interest issue. Speaking as a lawyer, we cannot approve the establishment of a judicial system with this conflict of interest cloud hanging over it. Given the professional experience of the honourable senator, I would like him to tell us about this conflict of interest.

**Senator Gill:** Honourable senators, I am neither a lawyer nor a legal adviser. Senator Austin says that the new institution we are creating is separate from the Department of Indian Affairs. I agree with him.

Who has responsibility for this? Who will decide what amounts are involved? Who will decide what judges to appoint? I understand that this is separate from the Department of Indian Affairs. Previously, it was the department that decided. Now, who will select the judges and set the time period in which to respond to a territorial claim from communities across Canada? Who will tell the minister to say yes or no? This is an improvement over the previous system. There have always been annual reports.

**The Hon. the Speaker *pro tempore*:** Honourable senators, the honourable senator's time has now expired. Are you seeking leave to continue?

**Hon. Senators:** Agreed.

**Senator Gill:** Honourable senators, the commission I sat on presented annual reports. The same issue was raised without fail every year. We were asking for greater autonomy, in a way that would force the minister to respond. He could say yes or no, but one way or the other he had to respond. We also wanted real rules for negotiation, meaning no decision before arguments were heard and negotiations held on the amounts, among other things.

Now, there is a ceiling on the amount and the minister does not have to respond within a certain time period.

Some communities are negotiating. I speak from experience because my nation, the Innu, has been negotiating since 1975. Do you think that things will change? I see no improvements. Initially, I was not sure, because I felt I did not have all the facts. All those with an interest in this, the lawyers and everyone who appeared before the committee said the same thing: Is the bill's sponsor, Senator Austin, the only one to see clearly? Everyone is following in his footsteps. There is a Montagnais saying: "There are those who blaze the trail; the trail can be good or bad." In my opinion, this bill contains conflicts of interest; one party is both judge and jury. This is extremely clear.



**Senator Nolin:** Honourable senators, the purpose of referring the bill to committee again was to hear other witnesses so as to clarify for senators the issue relating to conflicts of interest and the implementation of a legal system that upholds the fundamental rights we want upheld in Canada. Did experts comment on this and, if so, what did they say?

**Senator Gill:** For the most part, the witnesses had legal training. They either represented groups or appeared as individuals. This was very clear, because witnesses must identify themselves to the committee. The majority had experience as managers, recipients or advocates for these groups. A fair number of them were lawyers. Most were opposed to the bill.

**Senator Nolin:** Honourable senators, the conflict of interest issue is a very serious one. Did witnesses comment on this issue specifically, and were any solutions recommended?

**Senator Gill:** Honourable senators, it was addressed. The Department of Indian Affairs has traditionally been regarded as both judge and jury. This is not something specific to this bill. That is why changes are in order, to ensure a degree of fairness and objectivity. This point was made by several people, that is a fact.

**Senator Nolin:** Were any alternatives suggested?

**Senator Gill:** Honourable senators, one the one hand, the majority of witnesses were in favour of dropping this bill, which they did not feel was an improvement, and, on the other hand, they called for major amendments concerning the funding cap, the time limit on claims, and many more amendments.

There was an improvement with respect to the financial ceiling. The ceiling was increased from \$7.3 million to \$10 million. This was a recommendation the committee made. I do not know if it will be adopted. The fact is that there is no time limit or major improvements in other areas. There are only administrative arrangements.

• (1710)

[English]

**Hon. Anne C. Cools:** Honourable senators, I was listening with some care to the honourable senator who has informed us that Chief Phil Fontaine has taken a position on this matter. This is very new information to me.

Could Senator Gill tell us the date of the letter from which he was reading, as well as to whom the letter was addressed?

[Translation]

**Senator Gill:** The letter is dated October 2, 2003, and is addressed to Senator Thelma Chalifoux, the chair of the committee. It is signed by National Chief Phil Fontaine.

[English]

**Senator Cools:** Is the letter addressed to Senator Chalifoux as the Chairperson of the Standing Senate Committee on Aboriginal Peoples?

[Translation]

**Senator Gill:** I guess so, because it is addressed as follows: Chairperson, Senate Standing Committee on Aboriginal People.

[English]

**Senator Cools:** Honourable senators, it seems that this letter and the opinions expressed therein are of some importance to the debate and to the consideration of this chamber. For me, it is new information and I think very important information.

Senator Gill has quoted from Chief Fontaine's letter. Could Senator Gill table that letter for us today so that it may form part of our record and so that senators will be able to look at it tomorrow?

[Translation]

**Senator Gill:** Honourable senators, I do not know the procedure, but should we seek leave from the recipient of the letter, Senator Chalifoux? Is it necessary to seek leave from the committee? I do not know the procedure.

[English]

**Senator Cools:** It is simple. The honourable senator just has to ask the chamber for leave to table it and then hand it over to the table officers.

[Translation]

**The Hon. the Speaker pro tempore:** Honourable senators, is leave granted?

**Hon. Senators:** Agreed.

[English]

**Hon. Charlie Watt:** Honourable senators, will Senator Gill entertain at least one other question?

[Translation]

**Senator Gill:** If it is not too difficult.

[English]

**Senator Watt:** I know the honourable senator has participated and has been involved in a direct fashion with the activities that have been established for the Aboriginal peoples in the past. As the honourable senator described, he was a director general in Quebec City. In other words, the honourable senator was running the Department of Indian Affairs in Quebec City, something which I remember so well. During his capacity as director general, did he know that the conflicts still existed within the department itself? Could the honourable senator elaborate further on that point?

[Translation]

**Senator Gill:** Honourable senators, I have always tried to work, regardless of my responsibilities, on First Nations' priorities with the view of serving Canada. In my view, I have always served correctly. I did so by serving Aborigines and this country. I have always felt this conflict.

[English]

**Hon. Gerry St. Germain:** Honourable senators, I have a question. I have been in Ottawa for 20 years, 10 years in the other place and 10 years here. Over that period of time, I have noticed the way we work as partisans. In the field of Aboriginal affairs, we have made an attempt to make our work non-partisan.

When we worked on the Nisga'a agreement there was some discord. However, when someone like Senator Gill rises to speak, he takes a position based on his experience.

With all due respect to Senator Austin, he is not an Aboriginal. He is a great Canadian and he has done incredible work in British Columbia. However, he has been given his marching orders, which I think are trampling the rights of Aboriginal peoples.

Senators Gill, Watt and Adams are appreciative of their connection with the Liberal Party. However, this issue rises above Liberalism, Conservatism or Alliances.

Does the honourable senator feel that the rights and concerns of our native peoples are being trampled by forcing and pushing this bill through as it concerns the appointment of commissioners?

[Translation]

**Senator Gill:** My feeling is yes, that is right. This is not something that has just come up. It is not new. It has been going on for a very long time. I wonder, when will this end?

[English]

**Senator St. Germain:** I do not know when we will stop. Today, we have been speaking about the Metis situation. I was corrected by Senator Austin, who was one of the proponents of the Canadian Charter of Rights and Freedoms in 1982. He correctly stated that the rights of the Metis flowed from the Charter of Rights. However, the rights of the Metis people had to go through the Supreme Court. If those rights were entrenched, why then did the Metis have to go to the Supreme Court in the case of *Powley* to get their hunting rights? Senator Austin says that they have these rights through the Constitution. However, they have to pursue them before the Supreme Court.

Senator Gill is right when he says to Canadians that the rights of our Aboriginal peoples have been trampled on from day one, whether it is with regard to residential schools, reserves or any other issue. It is not what they wanted. It is what the White community wanted. Does the honourable senator think it will ever stop?

[Translation]

**Senator Gill:** Despite all my feelings and emotions, I think I am confident, despite all the problems we face.

[English]

**Hon. Willie Adams:** Honourable senators, I move adjournment of the debate.

**The Hon. the Speaker pro tempore:** Is it your pleasure, honourable senators, to adopt the motion?

[Translation]

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I wish to know the reason for the adjournment. I believe Senator Gill's motion has not been moved. Are we adjourning debate on the amendment? The amendment has not, to my knowledge, been moved. We have not had the question. I have no problem with the adjournment motion being allowed on the motion in amendment. I just want to be sure that we have had the question on the motion in amendment, that debate followed on that amendment, and that we are adjourning on the motion in amendment by Senator Gill. I want to see the situation clarified.

• (1720)

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** I agree, because I was waiting for Your Honour to present the amendment to the Senate. The solution is very simple. If Your Honour would be so kind as to present the amendment proposed by Senator Gill.

**The Hon. the Speaker pro tempore:** Honourable senators, it is moved by Senator Gill, seconded by Senator Watt:

That Bill C-6 be not now read the third time, but that it be read a third time this day six months hence.

Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

On motion of Senator Adams, debate adjourned.

[English]

## PUBLIC SERVICE MODERNIZATION BILL

### THIRD READING—MOTION IN AMENDMENT— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Harb, for the third reading of Bill C-25, to modernize employment and labour relations in the public service and to amend the Financial Administration Act and the Canadian Centre for Management Development Act and to make consequential amendments to other Acts,



And on the motion in amendment of the Honourable Senator Beaudoin, seconded by the Honourable Senator Comeau, that the Bill be not now read a third time but that it be amended in clause 12, on page 126, by replacing lines 8 to 12 with the following:

**“30. (1)** Appointments by the Commission to or from within the public service shall be free from political influence and shall be made on the basis of merit by competition or by such other process of personnel selection designed to establish the relative merit of candidates as the Commission considers is in the best interests of the public service.

(1.1) Despite subsection (1), an appointment may be made on the basis of individual merit in the circumstances prescribed by the regulations of the Commission.

(2) An appointment is made on the basis of individual”.

**Hon. Consiglio Di Nino:** Honourable senators, I am pleased to intervene in this debate. Bill C-25 replaces relative merit with individual merit, delegates authority down to lower level managers, makes it easier to hold competitions where only one qualifies and reduces the ability of the Public Service Commission to intervene.

The Privacy Commission was more or less allowed to run its own show on personnel matters.

With the release of the Public Service Commission's audit of the Privacy Commission's hiring action, and with the release of the Auditor General's report, we see the kind of problems you invite if you delegate away authority without proper safeguards.

One area in particular is the opportunity for managers to twist competitions so that only one candidate qualifies. Honourable senators were repeatedly warned in committee that managers will be able to twist job qualifications so that only one candidate qualifies. Anyone who does not think that this will happen would do well to look at the Auditor General's report. Under the subheading “The Office of the Privacy Commissioner Manipulated the Process to Favour Particular Candidates,” she writes:

We noted competitions with selection criteria that favoured a particular candidate but had no relevance to the actual position. In several cases, language requirements were changed to match the profile of the favourite candidate rather than the requirements of the position itself.

In another case, preference was to be given to a person with experience in “print media” that seemed unrelated to the work to be performed. When the Office wanted to hire a particular candidate from outside the organization who knew very little about the Privacy Act and other relevant legislation, the requirement to have this knowledge was

weighted lightly. When the Office wanted to exclude applicants from outside, it required a thorough knowledge of privacy-related legislation.

Honourable senators, we need to ensure that qualifications cannot be changed without the agreement of the Public Service Commission. Surely we ought to have learned something from the Privacy Commissioner's fiasco.

The Auditor General, at a press conference, said that she was outraged by what she found. In her media release, she said:

I am sorry to say that our audit revealed a major failure of management controls and the abuse of public funds by the former Commissioner and some senior executives, for their personal benefit.

What's even more disturbing was the treatment of employees. The human cost has been significant. I am concerned that an even greater harm may be done if this unusual case is generalized to all the employees of the Office of the Privacy Commissioner and the entire public service. This would do a great disservice to the thousands of honest and dedicated men and women who serve Canadians across this country.

She continued:

The former Commissioner and some senior executives failed to discharge their management obligations, and central agencies did not take appropriate action when they became aware of the problems. That's why this situation existed for so long.

Among many things found by the Auditor General are: one, that the positions were overclassified, resulting in high salary costs, and that there was hiring favouritism and unjustified performance awards; two, that there was an improper payment of \$15,000 to the former commissioner; three, that statements were falsified to cover up spending over the limits set by Parliament, that is, us; and four, that little value was received for the travel and hospitality bills of the former Privacy Commissioner.

The Auditor General also said that, “Whistle-blowing mechanisms are perceived as ineffective or non-existent.”

She said that employees:

...perceived the avenues for reporting wrongdoing or financial mismanagement as generally ineffective, offering little or no protection to staff who might notify a superior officer or the Public Service Integrity Officer.”

She further said that employees:

...told of a poisoned work environment at the Office of the Privacy Commissioner in which staff were intimidated by the former Commissioner. Our interviews consistently revealed instances of authoritarian behaviour amounting to what employees called a “reign of terror.”

She went on to state that:

...our interviews repeatedly disclosed instances of his humiliation of staff, inappropriate comments, intolerance, and verbal abuse that were socially unacceptable — in either Canada in general or the public service in particular.

Some employees said they had been discouraged from documenting their concerns; those who did had been treated poorly.

Honourable senators, we are also told that, "...employees broke down as they recounted how they had been treated." She stated:

We learned that some employees who had questioned or displeased the former Commissioner or his inner circle were banished from the Commission's floor, excluded from meetings they should have attended, not allowed to put their names on reports, and moved to other positions; in one case, the employee's work was contracted out.

As for core public service values, there was:

...a blatant disregard of four critical values that the Public Service Commission has espoused for staffing: nonpartisanship (including bureaucratic patronage), fairness, equity, and transparency. We found ample evidence of the avoidance of staffing competitions and the working around of staffing processes established by the Public Service Employment Act.

We found instances of the hiring of friends, acquaintances or former colleagues of the former Commissioner and senior executives.

• (1730)

She gave the example of a student position created for the girlfriend of a former Commissioner's son, at a salary 50 per cent above the norm for a summer student, with an extremely light workload, despite the individual's request to be assigned more work.

Honourable senators, part of the problem is that the Public Service Commission has been hamstrung in recent years by a lack of resources, making it harder to audit inappropriate hiring and promotions. Part of the problem is that the Public Service Commission was not aggressive enough. Part of the problem is that they made the mistake of believing the Privacy Commissioner's senior staff when they said that they were making progress in dealing with the problems that had been raised.

As the Public Service Commission noted in its response to the Auditor General, their oversight program, "...relied on deputy heads taking action to follow up on concerns brought to their attention, with direct intervention as a last resort."

Mr. Greg Gauld, the Public Service Commission's Vice-president of Merit, Policy and Accountability, was

reported, on September 30, 2003 in the *Ottawa Citizen* as having said, "This is probably the worst (case) we've seen in terms of staffing."

The following is from the Summary of Main Findings from the Public Service Commission's audit. It states:

The audit team found that:

The Office of the Privacy Commissioner's (OPC) strategies, plans and policies in support of staffing and recruitment activities are inadequate;

The roles and responsibilities pertaining to staffing are not adequately delineated and carried out;

Communications related to staffing activities are inadequate;

Reporting and control systems with respect to staffing activities are inadequate;

The mix of staffing processes and sources of candidates is not appropriate to assist the OPC to meet the challenge of putting in place an enhanced mandate;

The staffing of non-executive positions does not comply with the relevant legislative and policy framework;

The Public Service Commission (PSC) staffing of executive positions is generally in compliance with the relevant legislative and policy framework. Some of the actions, however, cast doubt on the application of staffing values; and

The OPC respects the technical requirements of the policies which govern the internal disclosure of the OPC staff of their concerns related to staffing. This includes the Policy on the Internal Disclosure of Information Concerning Wrongdoing in the Workplace. This is not, however, an effective mechanism to address wrongdoing in staffing.

The findings of this audit are that there are serious deficiencies in the management and operations of staffing and recruitment in the OPC.

Honourable senators, there was a disturbing disregard for the merit principle and for the law governing non-executive appointments. Yet, Bill C-25 would make it easy to tailor competition so that only one favourite candidate qualifies. Have we not learned anything? The Public Service Commission's audit remarks on non-executive staffing offers but a small taste of what we can expect after Bill C-25 becomes law. Speaking of staffing over the period of September 2000 to June 2003, the report noted



The audit team found that the staffing of non-executive positions does not comply with the relevant legislative and policy framework.

...the audit team found a tendency to tailor staffing requirements to favour a particular individual. The pattern of transactions casts doubt on whether the staffing values are respected.

Staffing was placed in the hands of managers who did not respect the process, leading to this commentary:

The lack of strategies, plans and policies in human resources management results in one-off decision-making about staffing, which is not necessarily in the long-term, best interest of the OPC. All of this leads to the perception that staffing values are not respected, in particular equity of access and the absence of bureaucratic patronage.

Everyone interviewed indicated that, within the Office of the Privacy Commissioner, managers decide on the desired results, i.e., whom they wish to recruit or promote, and human resources staff "make it happen". The result is a widespread disregard for the staffing values which underpin the current legislative framework.

Honourable senators, is individual rather than relative merit really the way to go? Is removing some of the current staffing safeguards really such a good idea?

With regard to reporting and control systems with respect to staffing, we are told that:

No results information with respect to staffing objectives is requested by, or provided to, senior management; management receives only status reports on ongoing staffing activities. Reports to central agencies on staffing, Employment Equity and Official Languages are not used to support management decision-making.

In a review of some of the appointments, we are told that:

Out of 35 reclassifications affecting 27 employees, 13 cases involved prior deployments or transfers and of these, five [...] were reclassified within a one-month period and an additional two [...] within a four-month period; this approach puts equity of access and transparency at risk;

A total of 34 employees were deployed or transferred and seven[...] received acting pay immediately or the day after; this raises doubts about competency, equity of access and transparency.;

13 employees were converted from casual (or contract) status to term or intermediate status through open

competition, for which the staffing requirements were tailored so that they would be successful; again, equity of access and fairness are at risk.

In 22 cases, there was inadequate documentation to demonstrate that the merit principle had been applied — no or incomplete assessment, no valid eligibility list, discrepancies in and inappropriate modifications to, language and security requirements; and

Seven employees may have had their recruitment to, and in some cases subsequent advancement within, the OPC influenced as a result of a previous business relationship or acquaintance with the former Privacy Commissioner.

**The Hon. the Speaker *pro tempore*:** Honourable senator, your time has expired. Do you wish to ask for leave to continue?

**Senator Di Nino:** Honourable senators, I would ask leave to continue.

**Hon. Senators:** Agreed.

**Senator Di Nino:** I thank honourable senators.

**Hon. Jean-Robert Gauthier:** I am trying as hard as I can to follow Senator Di Nino's argument. He is dealing with the sub-amendment to the main motion and I do not understand why he raises the matter of classification because it has nothing to do with the merit principle. Classification standards are set by the employer and the merit principle is followed by the commission. It is completely different.

**Senator Di Nino:** If the honourable senator would allow me to finish, I will answer questions later.

While the government still refuses to legislate whistle-blowing protection we are told:

A majority of employees and managers interviewed stated that the feared reprisals in future appointments should they complain about wrongdoing in the Office the Privacy Commissioner. They also indicated a lack of confidence that central agencies play an effective oversight role while protecting an employee who complains.

Honourable senators, I seriously do not understand why the government would want to pass this bill as is, knowing the kind of headlines that it may generate three or four years down the road. Perhaps Bill C-25 is a Trojan horse left as a gift for Mr. Martin by the outgoing regime.

In a written statement responding to the Auditor General's report, the President of the Treasury Board said: "I am very concerned and distressed by her findings. This is not the public service I know."

• (1740)

Honourable senators, we cannot in all good faith pass Bill C-25, a public service reform bill that may very well be based on a fallacy of a public service that we are not sure exists. Talk to ordinary rank-and-file public servants and they will tell you that they often know who will win a competition before the poster is even written. At least there is some transparency under the current rules and some checks and balances. Talk to visible minority public servants and many will tell you that discrimination in the workplace is hampering their chances for advancement, even with the safeguards we now have. Ask ordinary public servants if they would expose wrongdoing, and they will tell you that they have no burning desire to toss away their careers.

We would like to think that the potential for similar problems in other small fiefdoms elsewhere in the government is non-existent, but we do not know this for a fact. Yet, we are asked to delegate more authority down the chain.

Honourable senators, we need to take a serious re-examination of the way this bill affects the merit principle, of the way it guts the existing safeguards or the lack of protection for whistleblowers, and the way it allows hiring authority to be delegated away from the Public Service Commission. This bill needs to be amended to ensure that managers cannot unilaterally change job descriptions simply to fit the person they want to hire. It needs to be amended to ensure that the instances of bureaucratic patronage found by the Auditor General are not allowed to happen again.

#### MOTION IN AMENDMENT

**Hon. Consiglio Di Nino:** Therefore, honourable senators, I move, seconded by Senator Nolin, that the motion in amendment be amended

(a) by replacing the words "on page 126, by replacing lines 8 to 12" with the following:

"(a) on page 126, by replacing lines 8 to 11";

(b) by adding after the words "free from political influence" the following:

"and bureaucratic patronage"; and

(c) by replacing the words "of the Commission. (2) An appointment is made on the basis of individual" with the following:

"of the Commission."; and

(b) on page 127, by adding after line 9 the following:

"(3) The qualifications referred to in paragraph 30(2)(a) and subparagraph 30(2)(b)(i), and any qualification standards referred to in subsection (1), that are established for an appointment in respect of a particular position or

class of positions shall apply to future appointments in respect of that position or class of positions, unless any change established by the deputy head or employer to the qualifications or qualification standards, as the case may be, is approved by the Public Service Commission.""

[Translation]

**Hon. Jean-Robert Gauthier:** Honourable senators, I would like to speak to this amendment. Could I have a copy of the amendment? I was in the hospital for three years, and they said I was impatient.

[English]

I have the sub-amendment. I wish to speak to it because I have been working hard on Bill C-25 and have not had a chance to address the main motion yet. Keeping with tradition, I believe I have a right to speak on this bill.

On motion of Senator Gauthier, debate adjourned.

#### PARLIAMENT OF CANADA ACT

#### BILL TO AMEND—SECOND READING— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Graham, P.C., for the second reading of Bill C-34, to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, when the Leader of the Government spoke in presenting this bill, she drew our attention to the work of Senator Oliver. Senator Oliver is the opposition's critic on this bill. If it is agreed to by the house, I would like to move the adjournment of the debate in the name of Senator Oliver such that he would have the 45 minutes to continue. However, I would not want to impede the progress of our work on this bill if other honourable senators wish to speak now.

[Translation]

**Hon. Fernand Robichaud (Deputy Leader of the Government):** I would invite the honourable senators who intend to speak on this bill to do so today or tomorrow, when there will be a little more time. We accept Senator Kinsella's suggestion that the debate be adjourned in the name of Senator Oliver; even if someone were to speak ahead of him, he would keep his position as second speaker after the Leader of the Government.

On motion of Senator Kinsella, for Senator Oliver, debate adjourned.



• (1750)

[English]

## PUBLIC SERVICE WHISTLE-BLOWING BILL

### SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Kinsella, seconded by the Honourable Senator Murray, P.C., for the second reading of Bill S-6, to assist in the prevention of wrongdoing in the Public Service by establishing a framework for education on ethical practices in the workplace, for dealing with allegations of wrongdoing and for protecting whistleblowers.—(Honourable Senator Kinsella).

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I have been advised that I have 40 more minutes of speaking time.

Bill S-6 has come up in discussion on Bill C-25 in committee. There is a relationship between the two bills. Indeed, the issue of whistle-blowing was raised in Senator Di Nino's remarks this afternoon.

A great deal of public attention has been given by the media in recent times to the question of the importance of there being a legislative framework to deal with the matter of whistle-blowing, some of this attention occasioned by the events at the Office of the Privacy Commissioner and also the comments of the Auditor General.

Honourable senators, the model contained in Bill S-6 is exactly the same one that was contained in the bill that received second reading and committee support in the previous session but, as we know, fell off the Order Paper with the prorogation. The Senate is playing a major role by keeping this item before Parliament, even if it is in this form at this point in time. I would rather continue the debate on Bill S-6 after seeing how things proceed with Bill C-25. I know honourable senators opposite will want to share their views on what the President of the Treasury Board is proposing. We have yet to address that particular issue in our examination of Bill C-25.

On motion of Senator Kinsella, debate adjourned.

[Translation]

## HUMAN RIGHTS

### BUDGET ON STUDY OF SPECIFIC CONCERNS— POINT OF ORDER—SPEAKER'S RULING— REPORT OF COMMITTEE ADOPTED

On the Order:

Resuming debate on the motion of the Honourable Senator Chaput, seconded by the Honourable Senator Trenholme Counsell, for the adoption of the Fifth Report of the Standing Senate Committee on Human Rights (*budget—study to hear witnesses with specific human rights concerns*) presented in the Senate on September 25, 2003.—(Speaker's Ruling).

**The Hon. the Speaker pro tempore:** Honourable senators, yesterday, as debate was to begin on the motion for the adoption of the Fifth Report of the Standing Committee on Human Rights, Senator Lynch-Staunton raised a point of order. The Leader of the Opposition explained that the terms of the order of reference under which the Human Rights Committee is now operating did not include the authority to travel. The present mandate of the committee, as the senator stated, authorizes it to hear witnesses with specific human rights concerns. As he noted, there is no suggestion that the committee would travel. It is Senator Lynch-Staunton's contention that, and I quote, "It has always been our practice that if a committee believes that it must travel to fulfill its terms of reference, it include that request in its original terms of reference so that the Senate is informed, at the time of the request, exactly how the committee intends to carry out the commitment the Senate is asking it to undertake." The Leader of the Opposition then cited two parliamentary authorities to the effect that committees are strictly bound by their orders of reference and are not at liberty to depart from them. Based on this analysis, Senator Lynch-Staunton maintains that the Standing Committee on Human Rights in fulfilling its current mandate is limited to the national capital region "because no authority was requested at the time to pursue its study beyond that geographical area."

[English]

In reply, Senator Maheu reviewed the nature of the committee mandate and the importance of the requested trips to Geneva and Strasbourg. Such trips, the honourable senator explained, are an essential part of the committee's work because they allow the membership to better understand Canada's international human rights obligations as well as provide an opportunity for the committee to view the structure of human rights protection and promotion at an international level. In summary, Senator Maheu claimed that the proposed trip, like the one made by the committee to Costa Rica in the context of a previous study, helps to advance the work of the Senate.

Senator Robichaud, the Deputy Leader of the Government, explained that the process being followed by the committee in requesting the trip through a report was in keeping with the practice of the Senate. A committee undertaking a special study seeking to travel must first prepare a budget estimating the cost of the trip. This budget is then reviewed by the Standing Committee on Internal Economy, Budgets and Administration. Once the Internal Economy Committee has made its findings, it must then submit a report to the Senate. This report, which includes, as an appendix, information on the costs of the trip as approved by Internal Economy, must be adopted by the Senate. Without the Senate's sanction, the committee cannot travel anywhere.

There were other interventions on this point of order. Senator Kinsella, Senator Stratton and Senator Nolin expressed views in support of the general position taken by Senator Lynch-Staunton. I wish to thank all honourable senators for their contributions on this matter. This topic has already been the object of comment at various times during this session. As recently as last May, Senator Lynch-Staunton had several exchanges with Senator Kenny about the procedures in place to determine the cost of committee studies.

Whatever the merits or flaws of our procedures in setting committee budgets especially in connection with requests to travel, as Speaker I am bound by the practices and policies that the Senate itself has approved. Since 1986, the Senate has followed certain procedural guidelines with respect to what are termed "special expenses," including travel, that might arise in connection with committee studies. These guidelines have been printed as Appendix II of the *Rules of the Senate*.

In addition to setting out the steps that must be followed to secure approval for travel that Senator Robichaud mentioned, paragraph 2:02 of the guidelines states that:

A notice of motion to establish a special committee or to authorize a committee to conduct a special study shall not refer to special expenses but shall set a date by which the committee is to report to the Senate.

This passage has been taken to mean that no order of reference mandating a "special study" by a particular committee ought to contain any blanket authorization to travel.

[Translation]

Yesterday, some senators referred to an earlier study undertaken by the Human Rights Committee respecting the Inter-American Convention on Human Rights. The Senate adopted that order of reference on November 21, 2002. In keeping with paragraph 2:02 of the guidelines, the order of reference contained no mention of traveling. It simply authorized the committee "to examine and report on Canada's possible adherence to the American Convention on Human Rights." The order of reference also established a reporting date of June 27, 2003. At some point during its work, the committee came to the realization that it needed to go to Costa Rica to properly fulfill its mandate even though the original order of reference contained no provision for travel anywhere. In order to obtain permission of the Senate to go to San José, the committee followed the procedure stipulated in the guidelines. It prepared a budget, which was submitted to the Committee of Internal Economy, Budgets and Administration for approval, and then sought the permission of the Senate to travel through a separate report.

The object of the fifth report is no different. The steps that have been taken by the Human Rights Committee in seeking authorization to travel to Strasbourg and Geneva are in keeping with the established guidelines. Accordingly, I find that there is no point of order and debate on the fifth report can now proceed.

Honourable senators, it is now 6 p.m. Pursuant to rule 13(1), I shall leave the chair until 8 p.m.

Is it your pleasure, honourable senators, to adopt the motion?  
[English]

**Hon. Anne C. Cools:** Your Honour, I think it is in order to inquire of the honourable senators as to whether they wish you to see the clock. I think that is the question that Your Honour should have placed.

The sitting of the Senate was adjourned until 8 p.m.

• (2000)

The sitting of the Senate was resumed.

**Senator Carstairs: Question!**

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, our rules do not allow us to debate the Speaker's ruling and I respect that, though I may not agree with the conclusion.

This does, however, highlight the fact that, at least in my interpretation, our conditions and directives to committees as to how they should apply for terms of reference and for the budget accompanying those terms should be reviewed. I have been through this before. I will not repeat at length what I have tried to say before, which is that I urge the Internal Economy Committee to issue firm guidelines respecting the terms of reference of a committee to insist that the terms of reference be clear; that, if travel is thought to be necessary, it be included in the original terms of reference; and that a budget be included at the same time. Therefore, when the issue is raised for the first time, we can debate it not piecemeal, as we do too often, but debate the request as a whole and get it over with once and for all.

In this case — and this has nothing to do with any view I may have regarding the Human Rights Committee — the issue had to do with procedure. In May the committee's terms of reference did not include travelling, but a few months later we were told that a further budget was required to do something that had not been raised in the first instance.

That being said, this is a plea to the Standing Senate Committee on Internal Economy, Budgets and Administration which, although it has enough on its plate, it is allowed to sit during any adjournment and prorogation of the Senate, to design some guidelines and come back to us with a procedure so that any committee that requires terms of reference will know that, once those terms of reference are confirmed, it cannot come back to us.

Having said that, I will get on to the merits of the mission itself. I have no objection to it. It is quite proper that the Human Rights Committee should be able to meet with experts in the field all over the world. I have no problem with that at all. The problem I have with it is this: Is this the right time to do it? Unless a government spokesperson can contradict this, it is obvious from what we hear and read that, after November 7, we will have adjourned until perhaps late January or sometime in February. That means that, if the members of the committee are allowed to go on this trip now, by the time they get back, unless they report within a short period of time, we will not have the benefit of knowing what they achieved by taking this trip.

My suggestion to the chair of the committee is this: Would it not be best to delay the trip to a time when, upon your return, you know that you will have time to prepare the report and table it when the Senate is in session? If, after November 7 we are dismissed from this place until early next year, unless you commit to tabling a report before November 7, the trip will not benefit the Senate, which will have authorized it.

[The Hon. the Speaker *pro tempore*]



**Hon. Shirley Maheu:** Honourable senators, I would thank the Leader of the Opposition in the Senate for his intervention. Senator Beaudoin and Senator LaPierre will be travelling. Senator Beaudoin is in the habit of supplying documented information to this place. He is a fountain of knowledge. We will be meeting with groups who have already criticized our government. A report will be prepared as we travel in Geneva and in Strasbourg. Does that answer the honourable senator's preoccupations?

**Senator Lynch-Staunton:** My preoccupation is that the benefits derived from the trip will not be known to us before we leave this place on November 7. By the time we get back, because of prorogation — that is, unless it can be denied by the government that there is no prorogation in sight — your committee will be dissolved and all your efforts and expertise, from which we could have benefited, will be for naught. Perhaps selecting another time may not be convenient for those prepared to travel, but it may be more beneficial to those of us who want to take advantage of whatever the committee will learn on its travels.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, perhaps I may suggest a combination of what Senators Maheu and Lynch-Staunton have put forward. As senators and members of committees, we have an ability to table interim reports. I cannot give the honourable senator opposite an assurance that we will or we will not have a prorogation, since I simply do not know. However, I could suggest to Senator Maheu that the committee table an interim report on their trip prior to or on November 7. That would allow the entire Senate chamber to benefit from the experience that they acquire.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I have a question for the senator who has just spoken. What is this about prorogation that the honourable senator mentioned? How could the government possibly justify prorogation when the —

**Senator Carstairs:** I would point out that Senator Lynch-Staunton introduced the word.

**Senator Kinsella:** My question is this: Given the fact that we have Canadian soldiers in Afghanistan; given the fact that we have not solved the mad cow problem affecting Canadian beef producers; given the fact the flu season is about the begin and we may be faced with another reappearance of SARS; given the tragedy of the damage that was caused by the recent hurricane on the East Coast; and given the fact of the damage that has been caused by the forest fires on the West Coast, how could the government possibly be thinking of either adjourning Parliament earlier than the time that is already in the schedule or even contemplating something like prorogation?

**Senator Carstairs:** I do not know where the honourable senator is getting that idea at all. The Honourable Leader of the Opposition raised the issue of rumours and innuendo that he

had heard. I said I could neither confirm nor deny those rumours and innuendo because, frankly, that decision is made by the Prime Minister. Although I certainly admire him, respect him and would like to think I am close to him, he does not confide in me on such issues as whether he will prorogue the Parliament of Canada.

• (2010)

**Hon. John G. Bryden:** I will direct my question to the Leader of the Opposition in the Senate. If we follow his reasoning, we might not benefit from the experience of this committee, if whatever he imagines might happen does happen. Would it not follow then that we should cancel the plans of any committee that is travelling, from now until this is resolved, in order to make sure that we benefit from what they are doing whenever they travel? Should we be cancelling all of the travel?

**Senator Lynch-Staunton:** Honourable senators, I am encouraging the travel of the Human Rights Committee to Geneva and Strasbourg. I am happy that it is thinking of going there. I am not too sure about the people the chairman wants to take with her, but that is another question.

I do not like the way the committee came about it. The Speaker *pro tempore* ruled against the point of order. That is fine. I say for the last time — this week, anyway — that we should develop a better procedure, to avoid these fruitless, time-consuming moments of what are really administrative routine matters.

Do I want committees not to travel? I want the contrary. However, I want their travel plans to be known at the time they ask for a certain mandate. I do not want to know about travel plans six months later as an afterthought. That was my only point in the point of order.

As for the committee's timing, it is obviously wrong as far as the Senate is concerned, on the assumption that there is prorogation before the end of the year. Of course, the Leader of the Government cannot comment on that, but we have been through this before. Usually, rumours of prorogation have been proven correct.

**Some Hon. Senators:** Question!

**Senator Maheu:** Honourable senators, I would like to advise the Leader of the Opposition that I am appalled at his deputy leader being so against travel for a Human Rights Committee, particularly someone who verbalizes an interest in human rights more than anyone in the Senate.

I can advise honourable senators that, when we first applied for our budget, travel was part of it. Like all committees, our budget was changed at the time because there was not enough money in the budget of the Internal Economy Committee. Travel was indeed there.

**Senator Lynch-Staunton:** Honourable senators, it is like flogging a dead horse. The point is that in her original mandate she did not ask for travel. The formula I urge on all committees is to come with a request and a budget at the same time. That is all I am saying. When one goes for the original mandate, one should come with a budget and a mandate at the same time so that both may be debated and approved at the same time, so that we can avoid the fruitless, non-productive hours of debate such as we are having now.

**Senator Kinsella:** Honourable senators, I take it we are resuming the debate on the motion that is before us. I want to participate in the debate on the motion.

If you will read from your Order Paper, the debate is on a motion of the Honourable Senator Chaput, seconded by the Honourable Senator Trenholme Counsell, for the adoption of the fifth report of the Standing Senate Committee on Human Rights. That is what we have before us. I have not heard the explication given for this motion by either the mover or the seconder of the motion. Perhaps we should give them an opportunity to explain their motion. If they wish not to explain their motion, I am prepared to make some comments on the motion that is before us.

Honourable senators, the motion is a report that contains three paragraphs and an appendix. It is only by going to the appendix that we learn the purpose of the trip.

I concur with what the Leader of the Opposition has just said in reference to committee work and the principle that committees are servants of the chamber, and that the chamber has the duty to articulate clearly the order of reference it wishes to give a committee. If we have failed to do that in the past, then we have to accept the responsibility.

#### MOTION IN AMENDMENT

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Therefore, honourable senators, we ought to amend the motion that is before us by amending the fifth report.

I move, seconded by Honourable Senator Nolin:

That the Fifth Report of the Senate Standing Committee on Human Rights be amended by adding after the words "travel outside of Canada" the following:

#### MANDATE FOR TRAVEL

1. The committee shall during its visit to the United Nations office in Geneva inquire into Canada's compliance with the United Nations International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights;
2. The Committee shall, during its visit to the Human Rights Court of the Council of Europe in Strasbourg, inquire into areas of application of the European Social Charter as a model in Canada; and

3. The committee shall report to the Senate no later than November 4, 2003.

Honourable senators, speaking in support of this motion, I simply wish to make the point that the work of the United Nations High Commission for Human Rights, which has its headquarters at the UN office in Geneva, contains a number of the top experts from around the world dealing with international human rights. It is very important to note that we as a country are a major party, under international treaty law, to many of the United Nations human rights instruments. As a country we set an example that we can be proud of in terms of setting standards around the world. Therefore, it is in our domestic interest and international interest to be absolutely certain that we as a country are ourselves complying with all the provisions of the international covenants.

It was in 1976, as a result of an initiative begun in 1966, that the United Nations proposed for ratification two special covenants that provided implementation machinery for the rights that the world had recognized in the Universal Declaration of Human Rights, proclaimed on December 10, 1948. It took from 1948 to 1966 for the world community to agree on the kinds of machinery that would be necessary to give effect to the rights that the world community had recognized. They had determined in the process over that period that we need two different sets of machinery, one set for the protection and promotion of civil and political rights, which were more directly justiciable, and a different type of machinery for the implementation of economic, social and cultural rights.

• (2020)

It is important that we say this in this chamber. Honourable senators will recall that a joint committee of the House of Commons and the Senate came into this place and tabled a report at the time of the Charlottetown debate. On page 88 of that joint report, they said that there were no such things as real social rights. They were wrong. Not only are there social rights, but Canada, by ratifying the International Covenant on Economic, Social and Cultural Rights, assumed certain obligations under treaty law to ensure that these social and economic rights were implemented.

We can learn a great deal. This motion to amend the report speaks of our committee's visit to Strasbourg and concentrate more on the European Social Charter rather than the European Convention on Human Rights because we as Canadians do not have the kind of national social charter that many of us think we ought to have. We can learn a great deal about how the European Community, made up of all those different countries, with different domestic systems of governance, was able to agree upon a common social charter that gives effect to the enjoyment of the right to health, the right to education, the right to leisure, the right to work. These are social rights that a joint committee of the



House of Commons and Senate had the audacity to say in a report are not really human rights. They are human rights, and the honourable senators on the Human Rights Committee will learn about them if they ask questions in Strasbourg about the content of our international obligations under the International Covenant on Economic, Social and Cultural Rights.

Honourable senators, Prime Minister Pearson, in 1966, wrote to every province in Canada. We all recall how, in the early 1980s, we learned that there is a certain constitutional convention in Canada that the federal power, internationally, will not be exercised and treaties will not be entered into if the content of those treaties affects the jurisdictions of the provinces without first having the concurrence of the provinces. That is why Prime Minister Pearson wrote to the provinces.

Do you know what happened, honourable senators? By 1976, every jurisdiction in Canada, by letter to the Prime Minister, said, "Yes, our jurisdiction agrees that Canada ought to deposit the instrument of ratification, not to the one covenant on civil and political rights, but also to the economic, social and cultural rights covenant."

Honourable senators, we have had, since 1976, a standard of human rights covering civil and political, economic, social and cultural rights, agreed to in writing by all jurisdictions. It ought not to have been very difficult for us to have gone to the step of looking at a social charter in Canada when we already had the agreement. The ignorance in Canada around the reality of these international human rights covenants spoke loud and clear in the early 1980s when we were trying to elaborate a domestic constitutional Charter of Rights and Freedoms. Many Canadian jurisdictions did not realize that we were already obligated to a standard of human rights agreed to by the provinces in writing, agreed to by the federal government, and executed by depositing the instrument of ratification.

For these reasons, I agree with the Leader of the Opposition in saying that it is critically important for the Human Rights Committee of the Senate to analyze not only the UN system, but that we also learn a great deal from the European system. The committee's visit ought not to be a social gathering. It ought to be focused. Our order of reference should have said that we want our committee to study the covenants with the UN and to learn what it can about improving domestic human rights from the experience of the European Community. It is for that reason that I moved my motion in amendment.

**Hon. Senators:** Hear, hear!

**The Hon. the Speaker *pro tempore*:** Is it your pleasure, honourable senators, to adopt the motion in amendment?

Motion in amendment agreed to.

**Hon. John Lynch-Staunton (Leader of the Opposition):** The amendment comes from our side, but no copies were distributed. I insist that when an amendment is given, copies should be available for all senators. We are not wasting time here. It is a question of respect for the work of this chamber. Are we to vote?

**Hon. Laurier L. LaPierre:** Why not introduce the amendment beforehand? You have copy machines like the rest of us.

**Senator Lynch-Staunton:** Why not address that comment to Senator Gill and others while you are at it?

**Senator Kinsella:** What is your point?

**Senator LaPierre:** My point is, what do we do now?

**Senator Kinsella:** We adjourn the debate and deal with this matter tomorrow.

[Translation]

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I believe that the question has been put. The vote has been taken and you have clearly indicated that the motion has been adopted.

Senator Lynch-Staunton has pointed out that we should have had a copy of the motion in amendment before us and that we should have respected the opinions of all senators. I agree completely.

That is the reason we have passed Senator Kinsella's amendment; he is always very well informed. His amendment was exactly right. We have complete confidence in his judgment. We agree completely with what he has said. We are ready for the question on the main motion.

**Senator Lynch-Staunton:** I would like to know if the chair of the Human Rights Committee accepts the amendment and whether she is ready to commit herself to a fixed date for tabling her report. Until now we have had no such assurance.

[English]

**Hon. Shirley Maheu:** Honourable senators, when we talked about drafting a report upon our return from Geneva and Strasbourg, I said that it would be done as we go. I am well aware of the two covenants, and I am well aware of the two committees. We will be meeting with everyone we possibly can in Geneva and in the European Community.

**Senator Kinsella:** As chair of the committee, does the honourable senator see any problem with meeting the deadline to report to this house by November 4?

**Senator Maheu:** No, I do not.

**Senator Carstairs:** Question!

**The Hon. the Speaker *pro tempore*:** Is it your pleasure, honourable senators, to adopt the report, as amended?

Motion agreed to and report adopted, as amended.

• (2030)

**BUDGET ON STUDY OF LEGAL ISSUES AFFECTING  
ON-RESERVE MATRIMONIAL REAL PROPERTY ON  
BREAKDOWN OF MARRIAGE OR COMMON LAW  
RELATIONSHIP—REPORT OF COMMITTEE ADOPTED**

The Senate proceeded to consideration of the sixth report of the Standing Senate Committee on Human Rights (budget—study on the division of on-reserve matrimonial real property) presented in the Senate on October 7, 2003.—(*Honourable Senator Maheu*).

**Hon. Shirley Maheu** moved the adoption of the report.

Motion agreed to and report adopted.

[Translation]

**BUSINESS OF THE SENATE**

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Do honourable senators agree that all items not addressed be deferred until the next sitting of the Senate in the order in which they appear on the Order Paper?

**Hon. Pierre Claude Nolin:** Honourable senators, would it be possible to address the last item on the Order Paper, concerning Bill S-20? This item seems to have been neglected for a few days. It has to do with the amendment to the Copyright Act on page 18, Item No. 149.

**Senator Robichaud:** The Honourable Senator Nolin is referring to the last item on the Orders of the Day, Item No. 149. If there is consent, we could address this item now, defer all other items and move on to adjournment.

[English]

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** I have no objection to all remaining items being stood. We are at Motion No. 149. However, I would like to have some comments placed clearly on the record before we begin to adjudicate upon that matter.

I expect, and I attempted to do by way of consensus yesterday, that the substance of the motion will be adopted. However, if we are now proceeding by way of a formal motion, I simply wish to draw rule 58(2) to the attention of all honourable senators, which reads:

Where a Senator wishes to correct irregularities or mistakes in an order, resolution, or other vote of the Senate, the Senator shall give one day's notice, and a correction shall not be made unless at least two-thirds of the Senators present vote in favour of such correction.

I take it that this is one of those motions that is operating by virtue of that rule. While I fully expect the motion to be adopted unanimously, I just want it to be understood that had it been a contested vote, it would have required a two-thirds majority.

[Translation]

**Senator Robichaud:** Honourable senators, I agree.

[English]

**Hon. Joseph A. Day:** Honourable senators, I move the adoption of the motion standing in my name.

[Translation]

**Senator Robichaud:** Honourable senators, I am not trying to complicate things. We simply need to be sure that consent has been given for all items to stand until the next sitting of the Senate, all except Item No. 149, of course.

**Hon. Marcel Prud'homme:** Honourable senators, I am sure that the members of the Standing Senate Committee on Banking, Trade and Commerce will see no objection to having one mandate taken away from them and given to another committee.

The chair of the committee is not here this evening, and we are already pretty busy with the Companies' Creditors Arrangement Act and the Bankruptcy and Insolvency Act.

[English]

**Senator Day:** Honourable senators, I have already spoken to the chairs of both committees. The Banking Committee would normally deal with a patent of invention, which is a type of intellectual property.

[Translation]

**The Hon. the Speaker pro tempore:** Senator Robichaud has suggested that all items on the Order Paper, except Item No. 149, stand in their place until the next sitting of the Senate. Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to.

[English]

**COPYRIGHT ACT**

**BILL TO AMEND—MOTION TO WITHDRAW FROM  
BANKING, TRADE AND COMMERCE COMMITTEE  
AND REFER TO SOCIAL AFFAIRS, SCIENCE  
AND TECHNOLOGY COMMITTEE ADOPTED**

**Hon. Joseph A. Day,** pursuant to notice of October 7, 2003 moved:

That Bill S-20, An Act to amend the Copyright Act which was referred to the Standing Senate Committee on Banking, Trade and Commerce, be withdrawn from the said Committee and referred to the Standing Senate Committee on Social Affairs, Science and Technology.

Motion agreed to.

[Translation]

The Senate adjourned to Thursday, October 9, 2003 at 1:30 p.m.



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CANADA

# Debates of the Senate

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•

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OFFICIAL REPORT  
(HANSARD)

Thursday, October 9, 2003

THE HONOURABLE LUCIE PÉPIN  
SPEAKER *PRO TEMPORE*

## CONTENTS

(Daily index of proceedings appears at back of this issue).

## OFFICIAL REPORT

### CORRECTIONS

**Hon. Charlie Watt:** Honourable senators, yesterday I asked Senator Austin to provide a clearer picture on certain things that happened in relation to the Aboriginal people. I wish to make some corrections to the *Debates of the Senate* in that regard. Page 2061 reads:

That litigation continued during the period between 1946 to 1949.

That should read "1936 to 1939." Two sentences after that, the year 1949 should also be 1939.

I would like to correct another area so that my remarks do not apply to all Aboriginal people across the country. I was only speaking about the Inuit, and therefore, rather than "Aboriginal people" the words should be "Inuit people."

**The Hon. the Speaker *pro tempore*:** Is that agreed, honourable senators?

**Hon. Senators:** Agreed.



## THE SENATE

Thursday, October 9, 2003

The Senate met at 1:30 p.m., the Speaker *pro tempore* in the Chair. [Translation]

Prayers.

### JUSTICE

#### DECRIMINALIZATION OF CANNABIS FOR THERAPEUTIC AND RECREATIONAL USAGE

### SENATORS' STATEMENTS

#### THE HONOURABLE DOUGLAS ROCHE

##### CONGRATULATIONS ON PUBLICATION OF *THE HUMAN RIGHT TO PEACE*

**Hon. Yves Morin:** Honourable senators, I want to make my statement today in two parts. First, I would inform honourable senators that our colleague, and my friend, Douglas Roche has just published a book on a very important subject. The book is entitled, *The Human Right to Peace* and is edited by Novalis.

Congratulations, Senator Roche.

**Hon. Senators:** Hear, hear!

#### WORLD SIGHT DAY

**Hon. Yves Morin:** Honourable senators, the second part of my statement refers to the fact that today is World Sight Day.

[Translation]

Earlier today we wore our sunglasses in front of Parliament to show our support for the "Vision 2020, the Right to Sight" program. This program results from a collaborative effort between various Canadian and international organizations, including the World Health Organization. Its goal is to eliminate the major causes of preventable blindness.

[English]

In Canada, the Canadian National Institute for the Blind is spearheading Vision 2020. Every year, the CNIB assists more than 100,000 blind, visually impaired and deaf-blind Canadians to become full participants in all aspects of Canadian society. One of its priorities is ensuring funding for research in the area of visual impairment. This has worked in the past.

Honourable senators, because of research, more people in this country have cataract surgery each year than give birth. It is working in the present. Canadian researchers have made important strides forward in vision-related research. However, they need our support, not only on World Sight Day but also on every day.

**Hon. Pierre Claude Nolin:** Honourable senators, there has been unhealthy confusion in Canada since the beginning of the year on the constitutionality of criminal prohibition of the recreational or therapeutic use of cannabis.

In light of recent Ontario Court of Appeal decisions in the *Hitzig* and *J.P.* cases, I would briefly like to remind you of the legal and historical context in which this court handed down these two judgments. For everyone to understand, it is highly necessary to grasp the intricacies of this whole subject, which have been addressed by the Court of Appeal.

This long legal saga began in July 2000 when the Ontario Court of Appeal, in the *Parker* case, declared that the general prohibition of the possession of cannabis in Canada was unconstitutional, as it prohibited the use of this psychoactive substance for therapeutic purposes. In order to allow the federal government to change the legislation, the court suspended the application of its judgment until July 2001.

Subsequent to that judgment, in July of 2001, the Governor in Council adopted a world first, the Marijuana Medical Access Regulations. At that time, Health Canada really felt it had found a good solution for the problem raised by *Parker*.

In January 2002, two Ontario court decisions complicated the situation. First of all, arguing that Health Canada was refusing to provide cannabis to patients with federal authorization for medical use, who were therefore being forced to get their supply through the black market, with all the attendant risks, the Ontario Superior Court of Justice found, in *Hitzig*, that the July 2001 regulations were unconstitutional.

Second, and at almost the same time, another Ontario court, a lower court, in Windsor, this time, heard the *J.P.* case — initials are used because this was a young offender who cannot be identified — and found that the July 2001 regulations did not constitute an adequate legislative response to the decision in *Parker*. In order to be valid, the new government policy on the therapeutic use of cannabis ought, according to this court, to have been set via amendments to the act. This decision was confirmed by the Ontario Superior Court of Justice in May 2003.

The combined effect of these two decisions was that, from July 2001 onward, there was quite simply no prohibition, in Ontario at least, of simple possession of cannabis, whether for recreational or therapeutic use. Moreover, the confusion created by these two decisions resulted in a number of police forces in Ontario ceasing to enforce the law on this.

Honourable senators, this week in two Ontario Court of Appeal judgments — these decisions having been appealed by the Solicitor General of Canada — have ended all the confusion. This decision has been quashed.

**The Hon. the Speaker pro tempore:** I would like to inform the honourable senator that his time is up.

**Senator Nolin:** Honourable senators, I would ask your leave to finish my speech, which can be summarized in two pages.

**The Hon. the Speaker pro tempore:** I trust that the honourable senator realizes he is preventing several of his colleagues from speaking.

**Senator Nolin:** The Ontario Court of Appeal achieved this by declaring only certain provisions of the regulations unconstitutional because they imposed arbitrary limits on patients wishing to obtain cannabis produced for therapeutic purposes. This ruling dismisses: the need in certain cases for a second physician's opinion favouring the use of cannabis; the restriction preventing consumers from compensating suppliers; and the restriction regarding the number of producers who may supply cannabis to one patient.

With its ruling, the court has killed two birds with one stone; not only has it confirmed the validity of the regulations and indirectly legitimized the activities of compassion clubs, but it has also struck down the Superior Court's decision in the *J.P.* case by reinstating the ban on possessing cannabis for recreational purposes in Ontario.

• (1340)

Nevertheless, in Nova Scotia, Prince Edward Island and British Columbia, where the courts have made decisions similar to those of the Ontario judges, there is still uncertainty as to the validity of the ban. That said, the Ontario Court of Appeal has sent a very clear message to the Parliament of Canada, that we should stop procrastinating on this subject and shoulder our responsibilities, in order to eliminate any confusion surrounding the use of cannabis, whether for therapeutic or recreational purposes.

[English]

## NOVA SCOTIA

### HURRICANE JUAN

**Hon. Jane Cordy:** Honourable senators, on the night of September 28, 2003, Nova Scotia experienced the worst storm we have had in over 40 years. Environment Canada had warned of the impending hurricane, but most of us, being Eastern optimists, told ourselves that hurricanes have always slowed down before they reached land, and so would this one.

Hurricane Juan did arrive, with all its fury, torrential rains and winds of over 140 kilometres an hour. The result was more destruction than I have seen in Nova Scotia in my lifetime. Over 300,000 residents were without power. Classes at Halifax schools

and universities were cancelled for a week because of safety concerns for students. Many neighbourhood streets were blocked by fallen trees; trees that were torn up by their roots, often destroying sidewalks. At least three people were killed when trees crushed their vehicles.

The historic Public Gardens and Point Pleasant Park were largely decimated and will take many years to recover.

Nova Scotians are resilient and have worked through many challenges in the past. The day after the hurricane, the generosity of spirit shone through as so many rallied around to help one another. Most power has been restored, which is small consolation to those still in the dark, but when one has seen the devastation, it is small wonder that it has taken this long.

Nova Scotia power crews worked long hours, day after day. The Province of New Brunswick and the State of Maine sent crews to help restore power. Over 800 members of our military helped with the cleanup. Their generosity was most welcomed by Nova Scotians. The Emergency Measures Organization of Halifax Regional Municipality, which had appeared before the Standing Senate Committee on National Security and Defence just a week earlier, coordinated what was a great emergency response.

Honourable senators, it has been a challenging week and a half for Nova Scotians. Their resilience and willingness to help one another have come to the forefront as the rebuilding process has begun.

## WORLD MENTAL HEALTH DAY

**Hon. Marjory LeBreton:** Honourable senators, each year October 10 is set aside as World Mental Health Day. It is a day co-sponsored by the World Federation for Mental Health and the World Health Organization. It aims to promote mental health advocacy and educate people around the world about related mental health issues. This is a large and important undertaking, as the stigma surrounding mental illness can be found in every country, in every group of people, and among all ages.

The theme being promoted this year is the "Emotional and Behavioural Disorders of Children and Adolescents." This encompasses a wide range of disorders, including autism, schizophrenia, depression, eating disorders and suicide.

Canadian children are all too often affected by these disorders. The Canadian Mental Health Association estimates that almost 20 per cent of children in this country have a diagnosable psychiatric disorder. Our suicide rate for children and youth under the age of 21 is also one of the highest in the world. Other statistics related to the mental health of children in Canada are similarly depressing.

The World Health Organization has stated that the absence of good mental health practices early in life may lead to mental disorders with longterm consequences which in turn may reduce the ability of societies to be safe and productive.

[ Senator Nolin ]



Often, we feel helpless in dealing with mental health problems in our society, especially when they affect children. Assistance is available, but many children and adolescents are not receiving it because mental health problems can be difficult to recognize. Adults, whether they are parents, caregivers, teachers or doctors, must be attuned not just to the physical well-being of the children with whom they are in contact, but also to their mental state. Taking the time to question a child's troubling behaviour that seems both persistent and severe may lead to the successful treatment of a disorder that would otherwise continue to inflict pain. Promoting good mental health practices as a preventive measure against these disorders is another way that adults may better protect the children in their care.

Honourable senators, let us hope that the message put forward on this World Mental Health Day leads to the improved emotional well-being of children and adolescents in our country and around the world.

On a personal note, I am honoured to be on a Senate committee that is now studying this very important issue. Action must be taken.

## FOREIGN AFFAIRS

### ISRAEL AND SYRIA—HEIGHTENING OF TENSIONS

**Hon. J. Michael Forrestall:** Honourable senators, I want to associate myself with the remarks of my colleague from Dartmouth. As one of those who just had power restored this morning, I have a greatly relieved spouse. She will not have to carry water upstairs any more.

Honourable senators, I want to draw your attention to the situation in the Middle East. It is my greatest fear, and I am sure that of many other watchers, that war clouds are gathering in that area once again.

After what can only be described as a weekend of terrible violence, first with a suicide bombing in Haifa and then an Israeli air strike on a terrorist training camp in Syria, it is my understanding that both Syria and Israel have traded threats of military action and that Israel has given its military permission to mobilize reserve units.

Sadly, in the last day, reports would suggest that the Israelis have reinforced with a brigade their frontier to the north with Syria and Lebanon, and that as many as two more units are currently being sent north. Reports also suggest that two further Israeli battalion-sized units are being put in place opposite the West Bank and the Gaza Strip.

The prospect of conflict between Israel and Syria, ongoing as it may have been, would place in jeopardy the safety of 193 Canadians who serve as peacekeepers on the Golan Heights.

I ask the Leader of the Government, through the Deputy Leader in her absence, to convey these concerns to the government and urge that the government take all possible steps to ascertain the current disposition of Israeli and Syrian forces near the Golan Heights. Further, I urge the government to take increased precautions with Canadian Forces personnel in

that theatre of operations, including their withdrawal should that become necessary, and I ask that the Minister of Foreign Affairs take all possible steps to alleviate the tensions and restore some form of stability to that area.

[Translation]

## ROUTINE PROCEEDINGS

### CANADA-FRANCE INTER-PARLIAMENTARY ASSOCIATION

THIRTY-SECOND ANNUAL MEETING, JULY 6-15,  
2003—REPORT TABLED

**Hon. Lise Bacon:** Honourable senators, I have the honour to table, in both official languages, the report of the Canada-France Inter-Parliamentary Association on its thirty-second annual meeting, held in Paris, Angers and Vannes, France, from July 6 to 15, 2003.

• (1350)

### RULES, PROCEDURES AND THE RIGHTS OF PARLIAMENT

#### NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY PROCEDURE FOR THE APPOINTMENT OF PARLIAMENTARY OFFICIALS

**Hon. Jean-Robert Gauthier:** Honourable senators, I give notice that on Tuesday, October 14, 2003, I will move:

That the Standing Committee on Rules, Procedures and the Rights of Parliament study the way in which Parliament's senior officials are appointed, with a view to standardizing the process so that such officials are appointed using an established procedure that has been approved by both Houses of Parliament;

That the necessary provisions be put in place for removing such officials from their positions for cause, by a joint resolution of the Senate and the House of Commons; and

That the Committee report no later than November 28, 2003.

### LIBRARY OF PARLIAMENT

#### NOTICE OF MOTION TO AUTHORIZE JOINT COMMITTEE TO PERMIT ELECTRONIC COVERAGE OF PROCEEDINGS

**Hon. Yves Morin:** Honourable senators, I give notice that on Tuesday, October 14, 2003, I will move:

That the Standing Joint Committee on the Library of Parliament be authorized to permit coverage by electronic media of its public proceedings with the least possible disruption of its hearings.

## OFFICIAL LANGUAGES

### BILINGUAL STATUS OF THE CITY OF OTTAWA— PRESENTATION OF PETITION

**Hon. Jean-Robert Gauthier:** Honourable senators, pursuant to rule 4(h), I have the honour to table petitions signed by another 2,000 people, adding to the 4,000 already tabled, requesting that Ottawa, the capital of Canada, be declared a bilingual city and reflect the country's linguistic duality.

The petitioners pray and request that the Parliament of Canada consider the following:

That the Canadian Constitution provide that English and French are the two official languages of our country and have equality of status and equal rights and privileges as to their use in all institutions of the Government of Canada;

[English]

That section 16 of the *Constitution Act, 1867* designates the city of Ottawa as the seat of government of Canada;

That citizens have the right in the national capital to have access to the services provided by all institutions of the Government of Canada in the official language of their choice, namely English or French;

That Ottawa, the capital of Canada, has a duty to reflect the linguistic duality at the heart of our collective identity and characteristic of the very nature of our country.

Therefore, your petitioners ask Parliament to confirm in the Constitution of Canada that Ottawa, the capital of Canada, is officially bilingual, pursuant to section 16 of the *Constitution Act*, from 1867 to 1982.

[Translation]

## QUESTION PERIOD

### THE SENATE

#### QUESTION PERIOD—DESIGNATION OF REPLACEMENT IN ABSENCE OF LEADER OF THE GOVERNMENT

**Hon. Marcel Prud'homme:** Honourable senators, even if we address all our questions to the Deputy Leader of the Government in the Senate, given the absence of the Leader of the Government, I get the impression that the only response will be a guarantee to pass on our questions to the Leader of the Government in the Senate. Perhaps we could take this opportunity to suggest that the Standing Senate Committee on Rules, Procedures and the Rights of Parliament consider the possibility of having two individuals able to respond to our

questions. Who knows — after the next election — perhaps certain provinces will be underrepresented and it will be necessary to appoint a second minister in the Senate. That is my prediction.

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I have no objections to Senator Prud'homme's suggestion. It is indeed unfortunate that the Leader of the Government in the Senate could not be here today, due to special and extraordinary circumstances. I would like to remind the House that it is quite appropriate to address questions to the chairs of various committees. This would be completely in order.

## FOREIGN AFFAIRS

### CONFLICT IN MIDDLE EAST—REQUEST FOR STUDY BY COMMITTEE

**Hon. Marcel Prud'homme:** Honourable senators, my question is for the chair of the Standing Senate Committee on Foreign Affairs. Given the dramatic and worsening situation in the Middle East — particularly along the Syrian, Israeli and Palestinian borders; given the presence of Canadians in the Golan Heights; given our interest and our international reputation, has the time not come for your committee, which ought to be the best known committee in Canada, to consider studying this issue, which could threaten the lives of Canadian soldiers in the Middle East?

After 20 years without consideration of issues relating to the Middle East, the House of Commons is preparing to consider the Muslim issue — there are 1.2 billion Muslims in the world. As the chair of the Standing Senate Committee on Foreign Affairs would you agree to put on the committee's agenda the conflict in the Middle East and not just Canada's relations with the Arab world in general?

[English]

**Hon. Peter A. Stollery:** Honourable senators, as the Senate knows, committees of the Senate are instruments of the Senate. The Standing Senate Committee on Foreign Affairs has been occupied with questions of Canada-U.S. trade relations. Yesterday and the day before, we heard from some interesting witnesses on the pertinent question of exchange rates between Canada and the U.S. and whether the rising Canadian dollar will adversely affect our trade with the United States. These are the issues of which the Foreign Affairs Committee is currently seized.

Remember that the committee has a reference from the Senate: If the Senate orders the committee to study something then the committee is obliged to do so. Under the circumstances, must say that, given the calendar we all see coming at us, I do not quite see where we would fit in the time to study this issue.

I would add that, as Senator Prud'homme is aware, Senator Corbin has made a motion concerning this issue.

**Hon. Eymard G. Corbin:** I gave notice.



**Senator Stollery:** I stand corrected: Senator Corbin has given notice of a motion. That is where the matter rests.

We all know that there are important issues concerning the Syrian-Israel frontier and Lebanon, and we are all aware of them. I completely agree with Senator Prud'homme. However, my problem is that the committee has an important order of reference, one on which we have already tabled Volume I of our findings here in the Senate in June. We are working hard on the exchange rate issue so that we can also table Volume II before we adjourn.

Senator Prud'homme is certainly as experienced a parliamentarian as I am, and he knows the calendar as well as I do, and at the moment, that is the state of business with the Foreign Affairs Committee.

**Senator Prud'homme:** Honourable senators, I have a supplementary question. I have been here in this chamber now for 10 years. Before that, I was in the other place for 30 years. People do tend to beat around the bush.

We know that the pressure is so immense that the Standing Senate Committee on Foreign Affairs — the most prestigious committee of the Senate in my view — is staying away from the subject of the Middle East. That committee always studies Canada-U.S. affairs, and no one objects to that, but every time we publish a report it is already obsolete because the situation is changing so fast.

• (1400)

There have already been so many studies on Canada-U.S. relations, and so many exchanges concerning Canada and the United States that perhaps it is a way to avoid other issues. I repeat again: A study on the Middle East started in 1982 and finished in 1985, and we never again touched on the Middle East.

Honourable senators, in view of the explosive situation over there, I want to know if a prestigious committee like the Standing Senate Committee on Foreign Affairs has a duty to take the initiative and not just sit and wait to react. Unfortunately, I am deprived from sitting as a member of the Foreign Affairs Committee. The honourable senator knows that, but I want to say that if I were on his committee, I would insist and I would put motions. I am a member of the Banking Committee, and that is fine, but I hope the chairman of the Foreign Affairs Committee will show leadership and return to the days of the late Senator George Van Roggen, from Vancouver, who ran a most prestigious committee and was not afraid to tackle difficult issues. Please do not try and avoid this difficult issue, because the question of the Middle East threatens to explode in our faces, and then it will be too late for us.

**Senator Stollery:** Honourable senators, Senator Prud'homme has very ably expressed his views on this subject. First, let me just explain to honourable senators that the Foreign Affairs Committee has not continually and persistently dealt with Canada-U.S. affairs. In fact, since the free trade debate in 1987

or 1988, I do not recall us dealing with that subject at all. What we are concerned with here is a review of the free trade agreement. That is a very important issue and affects the lives of millions of Canadians.

Honourable senators, there are many important issues in the world. We could sit for 24 hours per day, 365 days per year and we would not resolve the problems of this large world in all of its complexity. We must make decisions. The members of the committee have made decisions, and we decided that it was important, on the fifteenth anniversary of the North American Free Trade Agreement, to review that agreement. That is what the committee is currently involved with and, as I said, if the Senate decides that we should do something different, then we would follow the orders of the Senate because we are servants of the Senate. However, at this point, as the chairman, my responsibility is to the members of my committee.

I might add that any senator may attend meetings of a committee. There is no rule that says any senator cannot attend meetings of a committee. That is where matters stand. We are working hard to bring an end to the exchange rate hearings, which are in the headlines of every newspaper in the country, if that means anything, and that is what we are involved with right now.

**Hon. Laurier L. LaPierre:** Honourable senators, I have a question of Senator Stollery. When he says that every senator may attend the meetings of his committee, does that mean that Senator Prud'homme is not barred from those meetings?

**Senator Stollery:** Honourable senators, I am not even on the Committee of Selection. However, for years the rule has been that any member of the Senate can attend a committee meeting, and that of course includes Senator Prud'homme, who is a very senior member of Parliament and of the Senate.

**Senator Prud'homme:** Honourable senators, I will correct a misunderstanding. I did not say I am not attending. I do attend the meetings of the Foreign Affairs Committee. I said I was deprived of being a member of the Foreign Affairs Committee, and for 10 years I have felt that that was unfair. I was clearly told to ask to be a member of any other committee, that I would not get on the Foreign Affairs committee and that I knew why. When Senator Corbin debates his motion, I will tell you why.

However, Senator LaPierre, of course any member of the Senate may attend any meeting of any committee, and I do that. I attend meetings frequently because I am interested in many issues, but I am talking about being a member of a committee. Attending a meeting of a committee is a different issue.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** My question is for the distinguished chair of the Foreign Affairs Committee. In your committee, is it not true that while Senator Prud'homme, or any other senator who has not been chosen by the selection committee and approved by the Senate to be a member of the committee, may attend, but only those who are members can move a motion and vote?

**Senator Stollery:** Honourable senators, that is absolutely correct. However, I would like to add to Senator Kinsella's important observation that, like most foreign affairs committees in the world, we do not study a great deal of legislation because the nature of foreign affairs does not lend itself to that. Therefore the number of actual votes that take place are relatively limited because we try, as much as possible, to have a general consensus when dealing with the various issues. Though what the honourable senator has said is true, it must be added that the situation does not arise all that often.

**Senator Kinsella:** Is it not true that the Foreign Affairs Committee did study the legislation dealing with NAFTA? Given that the Chrétien-Martin government said that they would get rid of NAFTA, is the honourable senator expecting legislation at any time soon before his committee to repeal that legislation?

[Translation]

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, this question is totally beyond the scope of what a committee chair can answer. It deals with something that is a matter of public policy and, therefore, cannot be answered by a committee chair.

[English]

## NATIONAL SECURITY AND DEFENCE

### NEW BRUNSWICK—ALLEGATIONS OF CAMPBELLTON AS ENTRY POINT BY ILLEGAL ALIENS

**Hon. John G. Bryden:** Honourable senators, this is now an opportunity to ask questions of chairs of committees, and I have been attempting for some time to get an opportunity to ask questions of the chairs of some committees. They are seldom here during Question Period.

**Senator Stollery:** I am here.

**Senator Bryden:** I mean none of the interesting ones — no, I do not mean that. Even yesterday, I knew that the chair of the Defence Committee would not be here.

**Hon. Gerald J. Comeau:** I rise on a point of order.

**Hon. B. Alasdair Graham:** No point of order during Question Period.

**Senator Comeau:** The absence of senators from the chamber is not supposed to be mentioned.

**Senator Bryden:** I am not referring to the absence of senators from the chamber; I am talking about chairs. I am talking about people holding office. I am not talking about who is who. I do not know, but I was standing yesterday because I thought I saw the deputy chair of the Defence Committee. He was here, but unfortunately time ran out before it got to raise my question. He was here today. The reason my question is important is that if either the chair or the deputy chair were here, I would have asked what evidence there is to support the claim made by the National Security and Defence Committee that illegal aliens are coming into North America via the Port of Campbellton, New Brunswick. This item was reported in all of the Atlantic Canadian papers.

• (1410)

The people of Campbellton are up in arms and have no idea on what basis this allegation was made. I would like to know the evidence on which these allegations were made. It is not unusual for this committee to go around making histrionic allegations, but these allegations should have some basis in evidence. That is the question I would have asked if the chair or the deputy chair were here.

[Translation]

## INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

### MEETING WITH REPRESENTATIVES OF CANADIAN PUBLIC AFFAIRS CHANNEL

**Hon. Jean-Robert Gauthier:** Honourable senators, I would have a question for the chair of the Committee on Internal Economy, Budgets and Administration, who incidentally is doing a fine job.

**Some Hon. Senators:** Hear, Hear!

**Senator Gauthier:** Today, the committee was to meet with representatives of CPAC concerning the broadcasting of our committee proceedings, among other things. This meeting was cancelled. Could the chair tell us when the next meeting with CPAC representatives is scheduled for?

**Hon. Lise Bacon:** Honourable senators, the meeting was postponed, not cancelled. We will meet as soon as we can find a date that is acceptable for both parties: committee members and CPAC representatives.

[English]

## THE SENATE

### QUESTIONS TO COMMITTEE CHAIRS DURING QUESTION PERIOD

**Hon. Peter A. Stollery:** Honourable senators, I have a question for the Acting government leader in the Senate. When did Question Period become a period where committee chairmen were asked questions? This is new procedure for me and I would like to know more about it.

[Translation]

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, the Rules provide that senators may ask questions of committee chairs, provided these questions concern the committee's work.



[English]

## ORDERS OF THE DAY

### SPECIFIC CLAIMS RESOLUTION BILL

#### THIRD READING—MOTION IN AMENDMENT— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Austin, P.C., seconded by the Honourable Senator Joyal, P.C., for the third reading of Bill C-6, to establish the Canadian Centre for the Independent Resolution of First Nations Specific Claims to provide for the filing, negotiation and resolution of specific claims and to make related amendments to other Acts, as amended,

And on the motion in amendment of the Honourable Senator Gill, seconded by the Honourable Senator Watt, that Bill C-6 be not now read the third time, but that it be read a third time this day six months hence.

**Hon. Nick G. Sibbeston:** Honourable senators, I wish to say a few words on Bill C-6. Some senators have expressed concerns about the passage of Bill C-6 as though it will be a detrimental bill to the Aboriginal people of our country, something that will make their lives worse instead of better. Remarks have been couched in terms that suggest the bill is the worst thing that could possibly happen to Aboriginal people and that it is a real set back for them. I wish to correct that view. Bill C-6 will improve Aboriginal people's lives in the country. I wish to explain why I feel this way.

I have not come to this decision lightly. I am sensitive to the actions of the other Aboriginal senators who are trying to delay this proposed legislation and who are probably hoping that the matter will be delayed to a time when there will be a new leader and a new government in place that might be able to improve it. However, I am of the view that the bill should proceed. The provisions in the bill that will establish a commission and a tribunal are positive steps and should be pursued.

If honourable senators were to review the proceedings of our committee and read through the presentations made, they would see that my interventions and questions were quite pronounced. I probed government officials and the Minister of Indian Affairs and his staff. I asked very pointed questions and raised many issues of concern about the bill.

I am also sensitive to the stance of the AFN, their representatives and the Aboriginal peoples who came before our committee to make their views known on Bill C-6. I am sensitive to their aspirations. As a result of the work done in committee, we were able to improve the bill in certain measures.

We have heard much of the history of the development of this bill and I do not intend to repeat it. However, we should recall

that this matter all started with a joint task force. When the task force concluded its work after two years, there was an expectation that the government would simply adopt the task force recommendations; however, it did not. Even the government admits that it differs significantly in at least two areas: the appointment process and the financial cap of the tribunal process. The AFN identified other areas.

Some committee members, including myself, questioned why the bill differed from the joint task force report. We asked why the bill did not reflect exactly what the task force recommended given all the work that had been done. The minister and his staff responded.

Four issues stood out as most significant when we were dealing with the bill: first, the independence of the commission and tribunal; second, the appointment process and consultation generally; third, the delay in the decision-making process because there was real concern that there be a means whereby decisions could ultimately be made and that the minister not delay decision making; and, fourth, the financial cap of the tribunal.

The committee made amendments to the bill in three of these areas and made observations in two of the others. I wish to address two of these issues.

I turn first to the subject of the appointments and the financial cap. The joint task force recommended that the minister and the AFN make appointments and re-appointments to the commission and the tribunal jointly. Bill C-6 proposed an Order in Council appointment on the minister's recommendation alone. Joint appointments to these types of positions are almost unprecedented. That has to do with the democratic system of government in Canada and that the government has responsibility. Cabinets are formed and they make the decisions for the government. That is the reason the bill appeared in the form it did, where the minister and cabinet have the ultimate authority and decision-making power in terms of who is appointed to tribunals and commissions.

• (1420)

There are a few examples, but almost always of the sort where a board and a minister jointly recommend who the board's chair will be. It has been done, but not generally for these types of bodies and, certainly, not for tribunals. Moreover, if the government and the AFN could not agree on appointments, there was no mechanism to break the deadlock.

However, the committee did see that completely shutting out First Nations in this process would not be fair. Therefore, several amendments were made. The minister is now required to seek nominations from claimants on appointments and must seek representation from all the First Nations in our country on the review of the centre that will occur in three to five years hence.

The minister is committed to making this whole process of dealing with specific claims work. I am aware that he is personally committed to see the commission and tribunal established and for them to be as effective as possible.

The issue of the financial cap has generated much debate. It has been implied that any large claim will now be excluded from settlement. I want to say this as clearly as possible: There is no cap or limitation on the size of a claim that can be brought to the commission. There is no cap or limit on the size of a settlement that can be negotiated. In the past few years, settlements have been reached for claims of \$1 million, \$5 million, \$20 million and even \$100 million. When the budget of the department has been exceeded, the minister has sought and has obtained supplementary funding to cover these settlements. To date, the government in its dealings with specific claims of unfulfilled treaties and such has spent in the area of \$1.4 billion and has dealt with 225 claims; hence, I have no doubt that the process will be improved, will be faster and will be more effective.

We have attempted to ascertain how many claims there are in the country. Estimates are that Canada will eventually have to deal with Aboriginal claims worth \$4 billion to \$5 billion. Approximately 600 claims must go forward through this process or, if not through this process, through the court process.

The government is faced with the responsibility of dealing with this issue. A formula in the bill outlines, in a general sense, the amount of money that will be made available on behalf of the government to settle these claims. All governments have a responsibility in terms of the amount of money that they spend. I have been the head of a government, and I am aware of the responsibilities of governments and cabinets. They simply cannot have a situation where they could be faced with claims that amount to billions of dollars and perhaps not have the money to deal with them. Therefore, the provisions in the bill, as far as I can see, are drafted so that the federal government can have a measure of control over the money that will be made available for claims. The notion that there is a limitless amount of money that the government can put forward for claims is not realistic. The provisions in the bill are the government's attempt to have some control over the money that cabinet will have available for settling these claims.

Committee members were concerned about the \$7 million cap, and it was raised to \$10 million. I have no doubt that in future years, when this bill is reviewed, there will be a further increase in the cap.

The tribunal is meant to be the process of last resort. It is used under two circumstances. If the minister rejects the claim as invalid, a claimant can seek a ruling on the validity. If the tribunal agreed it is valid, the claim would be negotiated.

The tribunal can also be used if negotiations fail and no agreement on compensation can be reached. Therefore, the tribunal is there as a last resort. Aboriginal people can go to it. Unfortunately, if they go to it, they must waive their rights to amounts over \$10 million, but that is a start, and I have no doubt that through the years this cap will be raised to higher amounts.

The government argued that it had to be cautious and had to carry out its duty to be fiscally responsible. Therefore, it wanted a limit on how big a settlement could be imposed by the tribunal and how many settlements the tribunal could impose each year. This is not unreasonable, as I said. I think government has to have some fiscal control over this area.

The committee was concerned about the requirement to waive claims above the cap to obtain a ruling on validity, which is an issue we raised with the government. With respect to the tribunal not being able to make decisions on merit as well as claims, the government sees the situation as putting a system in place. No one is perfectly sure how it all will work, and it wants to see how the system works before it makes more improvements. I have no doubt that, in time, more improvements and amendments will be made.

Honourable senators, this bill is not perfect. It certainly does not give Aboriginal people everything they want, but in my view, it is a step forward. Through my many years in government, I have pushed for changes in government, and it always seems we never get wholesale changes. Change comes incrementally, step-by-step, through hard work and persistence. That is the way government works, and I hope that the specific claims centre can be one of those.

I am hoping honourable senators will see Bill C-6 as an important step in dealing with unresolved claims in our country, and that it can be seen as a first step. I will be here five, 10 and 15 years from now and I will have a chance to review this matter. It is not a matter that will simply become law and be forgotten. There is a provision in the bill for the minister to consult with First Nations in three to five years, so I look forward to the minister reporting to us in a number of years, at which time I will question him about what improvements and progress have been made. We all can take the responsibility of ensuring that this bill and the system that it will put in place will have a good start and, eventually, a good life and that it will deal with the aspirations and claims of Aboriginal peoples.

Honourable senators, I stand here today encouraging you to pass this bill. It is not perfect, but I encourage you to see it as a first positive step in the struggle of Aboriginal people in our country to have justice.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, would the honourable senator answer a question of clarification?

**Senator Sibbeston:** Yes.

• (1430)

**Senator Kinsella:** Honourable senators, we just heard from Senator Sibbeston and he speaks of this bill as not a perfect bill. Would he share with us in what ways, in his view, this bill is not a perfect bill?



**Senator Sibbeston:** Honourable senators, it is not a perfect bill in the sense that the Aboriginal people of our country do not have the same role and the same influence in terms of appointing members to the commission and the tribunal. Of course, in a perfect world, both the federal government and the Aboriginal people would have equal say. Does our government, our democratic system and our system of cabinet government, where cabinets are ultimately responsible for the government, permit that?

In terms of a tribunal —

**Some Hon. Senators:** Order!

**The Hon. the Speaker:** I am sorry to interrupt the Honourable Senator Sibbeston, but his time has expired. Are you asking for leave to continue?

[Translation]

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I would like leave to be granted to Senator Sibbeston to complete his answer to a question by Senator Kinsella.

[English]

**Senator Sibbeston:** Another point I wish to draw to your attention is with respect to the tribunal itself. The tribunal is in place as a last resort; that is, when negotiations break down, Aboriginal people can go to the tribunal for a decision on the merits of a case. Presently, if Aboriginal groups go to the tribunal, they must waive their rights to anything above \$10 million. It would be nice if they did not have that restriction. I get the impression that, in time, this will happen; that in time, that cap will be raised, and perhaps some day the tribunal will not have a cap and can make a decision completely on the merits of a case. That is another area.

A further area of concern is the financial limits. At the moment, the federal government has put in place, or is in the process of placing, about \$250 million a year toward settling specific claims. Would it not be nice if it were \$1 billion or \$2 billion to resolve all the claims quickly? However, it does not work that way in the sense that there are limits. It takes time to consider all the claims. There are only so many claims with which the government can deal in a year because of the time it takes to review and to research claims. Yes, it would be nice if there were a limitless amount of money available, but such is not the case.

**Hon. Marcel Prud'homme:** Honourable senators, I wish to ask the Deputy Leader of the Government what criteria he is using on which to base his decisions regarding those who are allowed to continue speaking? Sometimes it is only when someone is finished questioning; at other times, permission is given to extend the time, and there are then two more questions, or one question and a half. The deputy leader just gave permission for the honourable senator to finish this answer and that was it.

What are the criteria? If we give permission to extend the time for questions, it is because there is a lot of interest. Strangely enough, my question is the same question as Senator Kinsella's. I do not know what is happening; I was about to ask the same question. We are here to make every bill as perfect as possible.

First, I do not know the criteria. I would like to know that for the future, before I give permission for people to extend their time. If it is to be only a question or a question and a half, I wish to know so that I am aware of the rules.

**Senator Kinsella:** It is a point of order. You decide.

**Senator Prud'homme:** It was only a point of order.

**Hon. Charlie Watt:** Honourable senators, there is definitely an interest here. Many of us would like to ask questions concerning the point raised by the Honourable Senator Sibbeston. Therefore, I would like to have this debate continue a bit longer so as to understand what exactly we are talking about here.

**Senator Kinsella:** What is the ruling on the point of order?

**The Hon. the Speaker pro tempore:** Honourable senators, is leave granted?

**Hon. Senators:** Agreed.

**Senator Watt:** Honourable senators, I do not agree with the outline given by Senator Sibbeston. If I recall, when this bill was still in committee and there came time to vote to bring this matter to the Senate, the honourable senator abstained. I want him to make it absolutely clear where he stands on this matter. In a sense, we are dealing with matters that will have an effect and a tremendous impact on our people.

Since the honourable senator considered this bill — and he seems to be moving in the right direction — it will have some positive elements, if not today then maybe tomorrow. However, tomorrow will come. The people who are dealing with this bill at the political level, especially those who are elected, are here today but they will not be here tomorrow. Senator Sibbeston highlighted the fact that he will be here for the next 15 years. I think I have the same term left.

**Senator Prud'homme:** You have 16 years!

**Senator Watt:** It might be longer than yours.

It is important to ensure that the instruments that we provide to the general public of Canada, the Aboriginal people, have a meaning in the sense that they can be used for good purposes.

The honourable senator says that the tribunal is the last resort. What happens if the minister decides not to answer the request and the tribunal is eternally handicapped? Let us say that during their deliberations they find out that their claim is worth a lot more than \$10 million — for example, in the neighbourhood of \$53 million or \$100 million or \$200 million? That is a very real possibility, because they must go through a number of years of research and things of that nature, depending upon their research

capabilities. They then bring the information to the commission, whereupon they find out that their claim is actually worth not \$10 million but over \$100 million. The minister says absolutely nothing; that is his privilege. However, all of those years will have been spent on this process and, at the end of the day, the applicants find out that they have no choice but to go to court. That is what will happen, unless there is a serious amendment to that particular area of the legislation.

How does the honourable senator feel about that? It is almost, in a sense, make-believe. People can go through that process but, at the end of the day, they can find out that there is nothing. That is what is wrong with this instrument here; it is incomplete. Too much power is being held by one person.

Senator Gill pointed out clearly yesterday that this matter must be rectified, clarified and dealt with once and for all. That is where the conflict of interest arises. Does one man, a minister who is politically elected — and who became a minister when he was appointed by the Prime Minister — a one-man show, have the right to run the life of the people? No. This is not right. This is 2003. I can understand that, perhaps, in the beginning, when there was a movement in the country and they had no choice.

**Senator Chalifoux:** What is the question?

**Senator Watt:** I already put the question on the floor, Senator Chalifoux: How does the honourable senator feel about so much uncertainty that lies at the feet of the Aboriginal people? I do not think we should accept that.

**Senator Sibbeston:** Honourable senators, we must look at our system of government that is in place, our democratic system and the executive system of government that we have in our country, where the Prime Minister with his ministers and his cabinet make decisions on behalf of government. That is our system of government that is in place. Governments are generally jealous of their ability to make appointments. The system is necessary so that decisions rest ultimately with a government. If we have a situation where other groups, other people, can also have a hand in making appointments, then the system will not work. It will break down. What if there is no decision with respect to appointments? Does the matter just end up in the air, undecided? Someone ultimately has to make the decision. That is the system of government we have in place.

• (1440)

Senator Watt raised the issue of conflict of interest, which was referred to yesterday by the Honourable Senator Gill. In our system of government, appointments are made to the judiciary and to the tribunals. In my brief experience, I sat on a human rights tribunal, a semi-judicial board that dealt with human rights issues. I was appointed. The moment you have a matter before you, you focus on it and try to make a fair decision to the best of your ability. It is my understanding that Senator Gill sat on a body similar to what we have here, one dealing with specific claims. I would ask him whether, when he was appointed, he felt

that he was bound to tow the federal government line. I do not think that is the case. You basically make a decision on the issues at hand. You are not very conscious of what the government thinks. You try to make a fair decision as best you can.

There is no other system. No other approach is possible in our system of governance, where the government appoints people to tribunals and boards. We have to live with that system and trust that the appointees are not in a conflict-of-interest situation. We must trust that they can make judgments based on their very best ability without regard for who appointed them.

Honourable senators, I have some faith in the system. Perhaps I am naive. Perhaps it is because I am from the North, where we have had a good experience with government and where Aboriginal people have become very involved in government, from a time when everything was controlled by Ottawa through the commissioners. Eventually, through political struggle, we took over. I have experience in government and have some faith in our democratic system and in the system of appointments because it is the only system we have.

I have no fear and no doubt that the minister exhibits goodwill and means well. I trust that his appointments to the commission and tribunal will be fair. Obviously, he will appoint the best people in our country. These appointees will make the best decisions they can based on the facts before them.

Senator Watt alluded to my abstention in committee. Politics is the art of the possible in the sense that you achieve what you can. When I abstained the other day with regard to the vote on whether Bill C-6 should go back to committee as is, it crossed my mind whether it would make any difference if we delayed this bill for six months until there was a new government and a new leader in place. I did consider it. For a moment, the thought went through my mind that perhaps there will be changes; perhaps with a new government there can be a better bill, an improved bill. However, after considering everything, I came to the decision that it is best for this bill to go forward as it is.

Let the system carry through. Let the government have a chance to set up a commission and a tribunal. We will have a chance in three to five years to conduct a review and report on how things are proceeding. That will be, in my view, the critical time to judge whether Bill C-6 has really come to life, as we all hope that it will.

I decided, therefore, that I would support the bill and give the government a chance, rather than delay the bill. If we delay the bill, who knows whether it will ever again see the light of day.

**Hon. Pierre Claude Nolin:** Honourable senators, even though Senator Sibbeston has not mentioned it, do I understand correctly that he does not support the motion in amendment by Senator Gill?

**Senator Sibbeston:** No, I do not.



**Senator Nolin:** One of the reasons Senator Gill is proposing such an amendment is the famous letter of Grand Chief Fontaine. Was Senator Sibbeston aware of that letter being sent to the chairperson of the committee?

**Senator Sibbeston:** Honourable senators, I became aware of the letter yesterday, just as others did. However, I am still persuaded. Organizations take positions. We are in the political business, where we hear the views of different people and different organizations trying to influence our decisions. I certainly considered the letter, and I considered that despite the position of the AFN, it is ultimately in the best interests of Aboriginal people to pass the bill at this stage.

**Senator Nolin:** Honourable senators, in making such a statement, has Senator Sibbeston taken the time to at least read the letter? Has the honourable senator read the entire letter, or has he just assumed the intention of those who wrote that letter?

[Translation]

**Senator Robichaud:** We cannot assign motives to an honourable senator, yet that is exactly what Senator Nolin is trying to do.

[English]

**Senator Nolin:** I will repeat my question, just to make it clear.

**Hon. John Lynch-Staunton (Leader of the Opposition):** All he wants to know is, did you read the letter?

**Senator Nolin:** Did the honourable senator read the letter before he made the statement in his previous answer? Has Senator Sibbeston read that letter?

**Senator Lynch-Staunton:** He only heard about it yesterday. Do not confuse him with the facts.

**Senator Sibbeston:** Honourable senators, I have not read the letter. However, I have listened to days and weeks of testimony by AFN representatives. I have not read the letter that was tabled yesterday in the house. I see it as a statement of general position by the new Grand Chief of the AFN.

**Senator Lynch-Staunton:** How do you know if you have not read it?

**Senator Sibbeston:** That is what I take it as. It is the general stance of the head of the AFN. I do not think that position differs much from the days and weeks of testimony that we have heard. I am more influenced by hearing people than by a letter.

**Senator Nolin:** Honourable senators, does Senator Sibbeston not think it would be respectful to the leader or the representative of an important organization, who took the time to write to the chairperson of the committee, to at least read the letter before making comments on the intent of it, and to wait until the next

sitting of the Senate to make a comment or even to repeat the comment that he just made? That would at least show respect for a group of respected Canadians and what they represent, and to a man elected by them.

**Hon. Jack Austin:** I wonder if Senator Sibbeston would let me ask him a question before he answers that question.

• (1450)

**Senator Kinsella:** Paul Martin is not Prime Minister yet.

**Senator Sibbeston:** It is nice to be getting so much attention.

**Senator Nolin:** You are making comments on something you have not read.

**Senator Sibbeston:** I very much respect Phil Fontaine, the Grand Chief of the AFN. Generally speaking, I respect the organization that represents the First Nations of our country.

**Senator Kinsella:** Generally, when it is convenient.

**Senator Sibbeston:** All I am saying is, please do not make a big thing of this. I am aware that the letter was tabled yesterday, and I am aware that there is a letter that contains the views or position of Mr. Fontaine. However, that is not all there is. We have heard days and weeks of testimony, and that influenced my decision more than one simple letter. As soon as I am finished here, I will read it.

**Senator Kinsella:** After he votes!

**Senator Nolin:** I have a final question for the honourable senator: Sir, before you read the letter, out of respect for our colleague who decided to introduce an amendment to the motion because of that letter, at least read the letter and wait until tomorrow or the next sitting day to speak.

**Senator Sibbeston:** Honourable senators, this is very much like the motion that was made to ultimately have the bill sent back to the committee.

**Senator Kinsella:** It is a totally different issue.

**Senator Nolin:** Read the letter.

**Senator Sibbeston:** I found that motion disrespectful of the chairperson and the committee members who worked for weeks and weeks on Bill C-6. Do you know what? The *Powley* case had no effect on that bill.

**Senator Nolin:** Read the letter.

**Senator Sibbeston:** I do not have too much regard for amendments made by people such as those on the opposition benches.

**Senator Austin:** Honourable senators, I would like to ask Senator Sibbeston a question. I spoke yesterday in the Senate. I made clear in my speech the testimony given to our committee by Mr. Schwartz, senior counsel for the Assembly of First Nations. He read the Fontaine letter into the record, and he was examined on the record. Members of the committee who are in the Senate today I am sure will remember that event.

The questions of Senator Nolin, I believe, are based on a false premise. The committee fully considered Phil Fontaine's letter, and it was fully presented by very able counsel, Mr. Schwartz, whom I quoted extensively yesterday.

I believe that Senator Sibbeston was not present for that part of the committee's hearings; is that correct?

[Translation]

**Senator Nolin:** My question followed Senator Sibbeston's answer.

[English]

**Senator Sibbeston:** Honourable senators, it is true that I was absent last week when the committee held meetings at which a representative of the AFN was present, and at which time it seems that they filed a copy of Mr. Fontaine's letter. I must admit that I was not present at that time, and so was not cognizant of that letter until yesterday.

**Senator Corbin:** On a point of order, Senator Sibbeston said that it was disrespectful to the chair of the committee to send the bill back to the committee. That was a decision not of an individual but of the Senate. Is the honourable senator imputing disrespect to the Senate?

**Senator Sibbeston:** Honourable senators, I am saying that I do not believe it happens very often that, after a committee works for weeks and months and files a report, the Senate adopts a motion to have the bill involved sent back to the committee. I think that is most unusual.

**Senator Kinsella:** On the contrary!

**Senator Sibbeston:** In the brief time that I have been here, I have not seen it happen. I know that for the time that this bill was being considered, I thought, "Wow, we worked so hard on this committee. We sat so long and worked so hard. Why is it that the matter is being sent back to the committee?" I believe that the only new element was the Supreme Court decision, and so that was the basis for having the committee deal again with Bill C-6. I know my initial reaction was, yes, one of discouragement. "Does the Senate feel we did not do our work thoroughly? What is the reason for sending back to a committee work that they had done already?"

**Senator Lynch-Staunton:** Because the bill is not perfect.

**Senator Nolin:** It needs more study.

**Senator Lynch-Staunton:** You yourself said that the bill is not perfect. Let us improve it.

**Senator Kinsella:** Have you read the bill?

[Translation]

**Hon. Aurélien Gill:** Honourable senators, in my past life I have already heard it said that it is very difficult for minorities to make themselves heard. It is usually said that the whispers of the minority are drowned out by the shouts of the majority. I think that is what is going on here in the upper chamber.

I see the paternalism of the past being repeated here. When Senator Austin comes to the defence of Senator Sibbeston, that is paternalism. I have a question, and I hope it will be answered by Senator Sibbeston. The honourable senator is right when he says that we have spend a lot of time on Bill C-6. Can you tell me the difference between the regulations of the old Indian Claims Commission and what is in the bill the government is trying to have passed? I want to know whether your group has had experiences under the old Indian Claims Commission. Have you experienced the effects of claims?

[English]

**Senator Sibbeston:** The honourable senator asks about the difference. My understanding is that, up until now, the whole matter of specific claims had been dealt with under the provisions of the federal Inquiries Act. The federal government at one point decided to set up an inquiry to deal with specific claims. That, in my view, is minor. Any time a government does such things as setting up inquiries, they can likewise take them away.

My view of our country, Canada, having to deal with specific claims of Aboriginal people is that it is more profound, more meaningful and more definite, bigger, if you will, to deal with a matter such as this through legislation, as we see here. Rather than the government holding a little inquiry, which can be taken away at any time at the whim of the government, it now has come forward with a bill. That bill has passed through the House of Commons and is now before us in the Senate. Parliament is now dealing with a body that will be set up to deal with specific claims. To me, that is much more profound and meaningful. It is a much bigger step, if you like, than the inquiries we have had up till now. To me, it is a very big, positive step forward.

Also, there are provisions for independence. Under the Inquiries Act there is sole dependence on the minister and the goodwill of the government for appointments to an inquiry. Under this provision, at least the process is legislated in terms of the membership of the commission and the tribunal. The process is much more open.

• (1500)

What we have before us today, in my view, is a step forward in dealing with all the unresolved claims of the Aboriginal people in our country. It is a step forward. Let us move forward with it.



[Translation]

**Senator Gill:** Honourable senators, you are speaking of an appointment process, but will that process be independent, the Minister of Indian Affairs not being involved?

[English]

**Senator Sibbeston:** I believe it will not be any less independent than the Supreme Court of Canada. The government makes appointments to the Supreme Court of Canada. Do we ever judge the Supreme Court of Canada's independence? It is the same thing. When a minister makes appointments, we must place some faith in the minister picking and choosing the best people for the roles that they will play on these commissions and tribunals. There must be some trust in the system that is in place. If there is not, then the whole system in our country is a failure and should be questioned.

The provisions in this bill are no different. Someone in the government has to make the decision. We amended the bill so that the minister now must consult with the claimants and in three to five years must consult with all the First Nations in the country. We did not have that provision before we began the amendment process. That took a lot of work to get done. It was not like we just rubberstamped a bill that came from the other place. We worked hard and we did respond to the First Nations that came before us. We did the best we could with the powers that we were given.

I am a bit saddened by the fact that First Nations, Aboriginal people, look to the Senate as a place where they can get justice. They should be getting it in the normal course of their dealings with the federal government. Why is it that First Nations and Aboriginal people look to the Senate only? Justice should be done in the course of government dealings with Aboriginal peoples. That point needs to be recognized. While we will do the best we can, we have limits, and everywhere possible we will just do the best we can in the circumstances.

[Translation]

**Senator Gill:** Honourable senators, I have confidence in the government. The people elect the members of Parliament in whom they have confidence. The people have confidence in the ministers appointed by the Prime Minister. According to a poll of First Nations people, their leaders have also been democratically elected. So, how does democracy function? Does it only function on behalf of one part of Canadian society and ignore the rest? Why does the honourable senator willingly put so much confidence in the Minister of Indian Affairs, who has absolutely no mandate from the Aboriginal population? How can you have confidence in the Minister of Indian Affairs and not have confidence in our national chief, who was elected by the chiefs, who in turn were elected by the local people?

[English]

**Senator Sibbeston:** I certainly have respect for the leaders of our Aboriginal people. In the Senate, we are in the realm of the

federal government, in the realm of Parliament. In our system of government, ministers have responsibility for different matters. In the case of Aboriginal people, the Minister of Indian and Northern Affairs is responsible, so that is our system of government.

The Northwest Territories, the area that I come from, has a long history of struggling for responsible government. Aboriginal people have struggled, but we have done reasonably well. Nunavut was created in 1999 and the aspirations of the Inuit were accomplished. I was involved in that ultimately happening.

Our experience in the Northwest Territories with the federal government was such that we hated the federal government, just like other people do, but we worked incrementally, to the point where eventually we ousted the commissioner. We ousted the federal government, but through hard work and persistence.

There are land claims in the Northwest Territories. I am fortunate and I do recognize that Aboriginal people in other parts of the country have a tougher life because there are many non-native people with a longer history. In the North, the federal government has done better and has settled land claims with most of the Aboriginal people. The Aboriginal people in the North are flourishing. They are involved in government and in all aspects of society. Aboriginal people are involved as partners in the diamond mines in the North. Aboriginal people will own one third of the pipeline that will go through our region some day.

While I have a certain amount of distrust of governments, my experience has been that through cooperation, through hard work and making incremental progress, positive things can ultimately be achieved. I do not have this great distrust and dislike for the federal government. The minister, in this case, has had good relations with the North. During the first year I was a senator, the Minister of Indian Affairs and Northern Development came to the North four times, which was never done before. I have seen the minister doing his work in the North, in his dealings with Aboriginal people, and he is very positive. He has made many concessions and has done very well his dealings with and his treatment of Aboriginal people in the North.

Can I assume that the minister's attitude and his nature is the same toward Aboriginal people in the rest of the country? My only hope is that it is. I trust that once we pass this bill he will work fervently to set up the commission and the tribunal. I also trust that these bodies will do their work and produce results. I have that faith.

**Senator Lynch-Staunton:** Senator Sibbeston did not answer the fundamental question of Senator Gill. I will ask the question in a different way by quoting from the letter Senator Sibbeston has not read, which is the letter Grand Chief Fontaine sent to the chair and members of the Aboriginal Peoples Committee dated October 2. My rewording of the question is by quoting from the letter, which states.

Few organizations operate as democratically as the AFN. A National Chief needs a mandate from a full 60 per cent of Chiefs who represent the overwhelming majority of First Nations. No organization is better suited to consult with and speak for claimants and potential claimants. Its position on Bill C-6 is supported by regional and individual First Nations across Canada. There is no split between the "grass roots" and the leadership.

All I want to know from Senator Sibbeston is does he agree with these statements?

**Senator Sibbeston:** Honourable senators, just like anything, it is not a letter from God; it is not the Bible. I believe certain things in it, but I recognize that just like in politics, different areas of the country have different views; so, when someone makes a statement, it does not necessarily apply throughout the whole country.

It was not God who wrote that letter. While I believe generally the statements that are made, I recognize that Aboriginal people are spread throughout the country from coast to coast to coast, so you are never able to get one unanimous, united view on certain things. While I respect the view of Mr. Fontaine, I know there are pockets of support in the country for Bill C-6.

• (1510)

**Senator Lynch-Staunton:** Mr. Fontaine signed "Phil Fontaine, National Chief," not "God," just to make that clear.

My question is: What role does the honourable senator see the Assembly of First Nations playing as representative of Aboriginals? To me, the honourable senator is dismissing the Assembly of First Nations, and I find that very difficult to accept.

**Senator Sibbeston:** Honourable senators, I believe we could be in a new era where the Chief of the Assembly of First Nations will have good cooperative relations with the federal government so that we do not find ourselves again in the situation where the Senate is looked to, to make changes. It is to be hoped that, in their day-to-day work they can wheel and deal and meet with the federal government and cabinet ministers, and good decisions will be made so that these matters do not end up on our plate.

I am optimistic that we are into a new era where the Assembly of First Nations will have good relations with the federal government and that a great deal will be accomplished.

**Hon. Consiglio Di Nino:** Honourable senators, in the spirit of clarifying the question raised by Senator Sibbeston, I will ask him a question that is intended to put on the record the response that his question raised.

Is the honourable senator aware that, in their wisdom, the Fathers of Confederation created the Senate with some specific mandates, one of which was to promote and protect the interests of regional and minority interests? If he is so aware, why is he asking what the Senate's role is in this issue?

**Senator Sibbeston:** Honourable senators, I totally believe in the mandate of the Senate, as the honourable senator indicated. I recognize our role as representing the regions, minorities and so forth. All I was saying is that it would make our task easier if major issues between the Aboriginal peoples and the federal government were dealt with in the normal course of their dealings. I get the sense that here in the south, relations between the federal government and the Aboriginal people are not very good. I sense that; that is all I am saying.

My hope is that, in the next few years, relations will improve and decisions will be made. I saw a bill go through last winter dealing with the Yukon where the First Nations were involved in drafting the bill. The bill came before the house and to our committee. The Aboriginal people from the Yukon were at the table, saying that they were involved in the legislation and heartily endorsed its provisions. We were so happy that we were able to confirm and approve the provisions of that bill.

Bill C-6 is so unlike some of the other bills we have seen. Honourable senators will recall Bill C-7, and there are other bills that are coming forward where there seems to be such a diametrically opposed position between the AFN, First Nations and the federal government.

I am only saying that it is to be hoped that we are in a new era where the AFN and Aboriginal groups can have good relations with the government, and that they can work cooperatively together on legislation so that when bills come before us there will be hardly a thing to change, hardly a thing to do and we can heartily support such bills. That is all I am saying.

**Senator Di Nino:** Honourable senators, that is not a good enough answer. It did not answer the question. If we have nothing to do, if we have hardly anything to do, then the taxpayers of this country should shut us down and send us home.

At the end of the day, does the honourable senator not agree that, in a perfect world, all of those wonderful things might happen, but when they do not, there must be a place where people and communities can go to get a fair shake in life? That is what this body is all about. This is why they are here. This is why they should be encouraged to be here, and not questioned as to why they should come to this place.

**Senator Sibbeston:** Honourable senators, I heartily agree with the stance of the honourable senator and what he has stated. I agree that this is a place where minorities, Aboriginal peoples and other regions can have their views represented.

On any matter such as this, some people will support the bill and others will oppose. In this case, certainly for the region that I represent, the Northwest Territories, my region would support this bill. To a certain extent, this bill is not even applicable because we are all into modern era treaties and land claims. All of the historical grievances and so forth have been set aside with these new land claims agreements.



In some respects, for my region of the country, the Northwest Territories, Bill C-6 is not tremendously applicable. We only have one reserve. I am aware of one or two little claims that perhaps do not even amount to \$1 million. However, I am conscious of the situation throughout the rest of the country where there are billions of dollars in outstanding claims that need to be resolved within the next few years.

I see Bill C-6 as a mechanism whereby we can make a serious start in dealing with some of these long-outstanding claims. I agree that the Senate of Canada is the place to deal with these matters.

Who is to say that the honourable senator is more right than I in terms of representing regions or people? I have stated my position. Senator Chalifoux and I have stated our positions. We support the bill. The fact that others do not exactly agree does not mean that they are more right than we are. On balance, honourable senators will have to make their own decision as to what is right and fair.

**Senator Kinsella:** Honourable senators, the specific motion to which Senator Sibbeston has spoken is the motion in amendment of Senator Gill. That motion is that the bill be not now read the third time, but that it be read the third time six months hence.

**Hon. Laurier L. LaPierre:** Honourable senators, on a point of order, that is not exactly what the amendment says. The motion in amendment of the Honourable Senator Gill, seconded by the Honourable Senator Watt, says:

... that Bill C-6 be not now read the third time, but that it be read the third time this day six months hence.

This day is Thursday, October 9, 2003. That third reading will not occur six months hence. Is my understanding correct?

**Some Hon. Senators:** No, no.

**Senator LaPierre:** Is it not a fact that that is what the Order Paper says? It does not say, "this day six months from now."

**Hon. Anne C. Cools:** Honourable senators, I would like to thank Senator Sibbeston.

**Hon. Gerald J. Comeau:** Honourable senators, someone had the floor when the point of order was raised.

**Senator Cools:** Are we on a point of order? What are we on? What is the question before us?

**Senator Prud'homme:** Honourable senators, Senator LaPierre raised a point of order on the basis of the English text. However, I would ask honourable senators to read the French text that is absolutely exact.

[Translation]

Que le projet de loi soit lu une troisième fois dans six mois de ce jour.

You are right and you are wrong. You are right because the bill would be read in six months, counting from yesterday, but it is not something that had to be done yesterday. It is postponed for six months from this day. That is the usual expression when we are postponing a bill.

• (1520)

**Senator LaPierre:** Do we take the French version or the English version? Could the honourable senator be quiet? The English version is one thing; the French version is another. Which one should we take?

[English]

**Senator Cools:** I would like to say that there is no point of order. I think it is not a valid point of order. It may have provided a moment of levity and a bit of humour, which is always useful.

**Senator LaPierre:** She has no right to insult me.

**An Hon. Senator:** You are not being insulted.

**Senator Cools:** Should I start again? I was saying that there is no point of order and there certainly is no valid point of order because the motion that is before us, to which Senator Sibbeston was speaking, is crystal clear. In point of fact, the intervention and opportunity has provided a relief for senators because I think humour in debate is always useful and levity is always welcome.

What was passing before us, I thought, was an extremely serious exchange. I do not know about some honourable senators, but I have been deeply touched by what Senator Sibbeston said. I am not sure I agree with it, but I was touched by it. Senator Sibbeston, I would dare add, is a man who holds much respect here and in his own part of the world. I say that with all seriousness.

I would hasten to add that Grand Chief Phil Fontaine equally commands a high degree of respect, and, to my mind, his words should be heard, considered and heeded by this chamber.

In actual fact, honourable senators, there is no confusion whatsoever in the intent or the meaning of the motion because motions, after all, are moved on a particular day, but they can only take effect on the day that they are actually adopted and passed. Therefore, the term "this day" will be referring to the day that the motion is actually adopted. Therefore, for example, if the motion were adopted today, this day six months would begin counting today. In other words, if the motion were not adopted for another five months, then the six months would move along, and the counting of the six months would begin from that day because "this day" usually refers to the day that the order takes effect. I would have thought that was pretty clear. I thought that we were taking the intervention as a way of refreshing ourselves mentally.

I want to ask honourable senators — and I do not know if I can now — about the letter to which everyone has been referring. Yesterday, Senator Gill asked for leave to table the letter from Grand Chief Fontaine. I had assumed at the time that he was asking leave as well to have it appended to yesterday's *Debates of the Senate*.

[Translation]

**The Hon. the Speaker pro tempore:** Senator Cools altered the debate by replying to the first question from Senator LaPierre. Then Senator Cools raised a point of order, which is not valid at the moment.

[English]

**Senator Cools:** I do not think I have changed the debate at all. I have been speaking to the point of order and, in that way, have been very consistent, Your Honour.

I was saying that the issue of this letter came up time and again. It is relevant to the adoption of this motion because it has been a pivotal plank in Senator Gill's previous statements.

In addition, on the point of order and the motion, I was trying to discover why the letter was not appended to the Hansard of yesterday's proceedings. On looking at Hansard and the *Journals of the Senate*, I have discovered that the letter will be recorded not in the debates, but in the sessional papers because it seems that Senator Gill was not explicit enough in the request. As a matter of fact, he actually made no request at all. It was Her Honour who rose and made such a request.

Since that letter comprised such an important part of today's exchange, could it be appended to today's proceedings.

**The Hon. the Speaker pro tempore:** Is it agreed, honourable senators, that the document be appended to today's *Debates of the Senate*?

**Hon. Senators:** Agreed.

(For text of document, see today's *Debates of the Senate*, p. 2100.)

**Hon. Willie Adams:** I move the adjournment of the debate.

**The Hon. the Speaker pro tempore:** I will ask the honourable senator kindly that the next time he stands up to please use the microphone because we do not hear a word here.

It is moved by the Honourable Senator Adams —

**Senator Kinsella:** No, we have a point of order that must be dealt with.

[Translation]

**Senator Robichaud:** Honourable senators, several of you are under the impression that a point of order raised by Senator LaPierre is under discussion. The Senate should decide whether or not there is a point of order. We could then resume debate and move to the adjournment motion by Senator Adams.

[ Senator Cools ]

**Senator LaPierre:** Honourable senators, I bow to the will of the people. I therefore withdraw my point of order.

[English]

I can raise it six months hence. In the meantime, I think we may proceed with this very fascinating debate, as long as we do not hear too much from Senator Cools.

**Some Hon. Senators:** Oh, oh! Withdraw.

**Senator Cools:** Honourable senators, I rise on a point of order. I have always been under the impression that it is out of order in this place to make sharp or unpleasant statements about senators. I have the floor.

**Senator LaPierre:** I withdraw everything that I said.

**Senator Cools:** There is nothing much to add to that.

**Senator Kinsella:** I think we are still on Senator Sibbeston's time. I had risen to ask the honourable senator a question on the motion that is before us, which is the motion of Senator Gill that the bill not be read the third time now but that it be read six months hence. It is to that question that I assumed Senator Sibbeston was speaking.

My question for clarification to Senator Sibbeston is simply this: What harm does he see being done in a real way if this bill is not given third reading now but, rather, third reading six months hence?

• (1530)

**Senator Sibbeston:** Honourable senators, I think Senator Kinsella knows the answer. The answer is that there is no harm, but at the same time there is no gain. There is no gain, likewise, in the sense that the senator knows that in the present political atmosphere that prevails, in the event that there is prorogation it would absolutely kill this bill and we would have to start over and do again all of the work that we have done to date. To me, that is neither a prudent nor a wise use of our resources. I have made a decision that it would be best to pass the bill during the life of this session of Parliament.

**Senator Kinsella:** Does the honourable senator not agree that there is a practice in this place of long standing that no work is lost? Indeed, when the House is considering a bill and a committee has deliberated upon a bill, all the papers and testimony that have been tabled with that committee can be brought forward to the committee, even in a new Parliament? Why does the honourable senator think that the work that has been done, which is important work, would be lost?

**Senator Sibbeston:** I admit that perhaps all of the committee hearings, and so on, would not have to be done again, which is what the honourable senator is saying, namely, that that is preserved and we would go on from there.



Politics being what they are — and Senator Kinsella knows how politics works — who knows who the Minister of Indian and Northern Affairs will be in the future? Who knows what will be the views of the Prime Minister and the government, and whether or not they will be amenable to supporting and being supportive of bills such as this? At this time, when we know that the government supports this bill and is prepared to take action on it, I think we should take advantage of that and jump ahead and pass this bill.

**Senator Kinsella:** Is the honourable senator suggesting to the house that, in the unlikely event that Mr. Martin becomes the Prime Minister, under Mr. Martin's government the bill would be better or would be worse? That is, would it be better under Prime Minister Chrétien or better under a prime minister Martin?

**Senator Sibbeston:** That is such a political question. I have no doubt that the government will be better. Once we have passed this bill during this session, then we can work in the life of the next government to make this bill even better. That is my view.

**Senator Kinsella:** Honourable senators, are honourable senators correct in assuming that the position of the honourable senator is that no particular damage would be done by adopting the motion that is before us from Senator Gill, namely, that the bill be not now read a third time but be read a third time six months hence?

Second, while the honourable senator advised us that he did not read the letter from Chief Fontaine, which is dated October 2, can he advise the house as to whether or not he has read Bill C-6 and all pages of the bill?

**Senator Sibbeston:** Honourable senators, I can tell the honourable senator that I have read the bill a number of times. I have read it before going to bed. I have read it when I have risen. I have read it quite a number of times and I am totally familiar with the bill and the amendments; I was intimately involved with the amendments.

As to whether I can cite chapter and verse at the moment, I cannot say that I can. However, I know the general details of the bill reasonably well.

**Senator Kinsella:** Could you tell us how many pages are in the bill?

**Senator Austin:** That is disrespectful.

On motion of Senator Adams, debate adjourned.

[Translation]

#### NOTICE OF MOTION FOR TIME ALLOCATION

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I inform you that it has not been possible to reach an agreement concerning the time to be allocated for the consideration of this bill.

Therefore, pursuant to rule 39, I give notice that, at the next sitting of the Senate, I will move:

That, pursuant to rule 39, not more than a further six hours of debate be allocated for the consideration for third reading of Bill C-6, An Act to establish the Canadian Centre for the Independent Resolution of First Nations Claims to provide for the filing, negotiation and resolution of specific claims and to make related amendments to other Acts;

That, when debate comes to an end or when the time provided for the debate has expired, the Speaker shall interrupt, if required, any proceedings then before the Senate and put forthwith and successively every question necessary to dispose of the third reading stage of the said bill; and

That any recorded vote or votes on the said question shall be taken in accordance with rule 39(4).

[English]

#### BUSINESS OF THE SENATE

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, having risen and having the floor, I move that the Senate do now adjourn.

[Translation]

**The Hon. the Speaker pro tempore:** The Honourable Senator Kinsella, seconded by the Honourable Senator Lynch-Staunton, moved the adjournment of the Senate. Is it your pleasure, honourable senators, to adopt the motion?

**Some Hon. Senators:** Yes.

**Some Hon. Senators:** No.

**The Hon. the Speaker pro tempore:** Will those honourable senators in favour of the motion please say "yea"?

**Some Hon. Senators:** Yea.

**The Hon. the Speaker pro tempore:** Will those honourable senators who are opposed to the motion please say "nay"?

**Some Hon. Senators:** Nay.

**The Hon. the Speaker pro tempore:** In my opinion, the "nays" have it.

Honourable senators, I declare the motion lost.

#### PUBLIC SERVICE MODERNIZATION BILL

##### THIRD READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Harb, for the third reading of Bill C-25, to modernize employment and labour relations in the public service and to amend the Financial Administration Act and the Canadian Centre for Management Development Act and to make consequential amendments to other Acts,

And on the motion in amendment of the Honourable Senator Beaudoin, seconded by the Honourable Senator Comeau, that the Bill be not now read a third time but that it be amended in clause 12, on page 126, by replacing lines 8 to 12 with the following:

**"30. (1)** Appointments by the Commission to or from within the public service shall be free from political influence and shall be made on the basis of merit by competition or by such other process of personnel selection designed to establish the relative merit of candidates as the Commission considers is in the best interests of the public service.

(1.1) Despite subsection (1), an appointment may be made on the basis of individual merit in the circumstances prescribed by the regulations of the Commission.

(2) An appointment is made on the basis of individual".

On the sub-amendment of the Honourable Senator Kinsella, seconded by the Honourable Senator Stratton, that the motion in amendment be amended:

(a) by replacing the words "by replacing lines 8 to 12" with the following:

"(a) by replacing lines 8 to 11"; and

(b) by replacing the words "(2) An appointment is made on the basis of individual" with the following:

"(b) by replacing lines 26 to 29, with the following:

"may be identified by the deputy head,

(iii) any current or future needs of the organization that may be identified by the deputy head, and

(iv) achieving equality in the workplace to correct the conditions of disadvantage in employment experienced by persons belonging to a designated group within the meaning of section 3 of the *Employment Equity Act*, so that the employer's workforce reflects their representation in the Canadian workforce."

**Hon. Jean-Robert Gauthier:** Honourable senators, I rise today to speak on the sub-amendment by the Honourable Senator Di Nino, my colleague and friend. Senator Beaudoin, who is a lawyer, a constitutional expert and a good friend, moved the amendment. Senator Di Nino's sub-amendment is not, in my opinion, in order, for the following reasons.

The main amendment by Senator Beaudoin refers to the principle of merit in almost identical terms as current legislation. With his amendment, Senator Beaudoin is reintroducing in the

new legislation all the jurisprudence that has bogged down and increasingly bureaucratized the current staffing system, which has long been criticized. Senator Beaudoin is a good lawyer, he thinks in legal terms and he wanted to use jurisprudence. Because, up to now, the courts have been the ones to interpret the principle of merit, as this was not included in the legislation. Nor was there a definition in the legislation. On numerous occasions, this issue has been brought before the courts.

Under the current legislation, the Public Service Commission can make appointments based on selection by competition to establish relative merit — this is section 10 — as well as appointments based on selection according to individual merit, meaning the candidate must be measured by standards of competence, under section 10(2).

• (1540)

Bill C-25 does not change this authority. The Public Service Commission can continue to make appointments through competition or, under the new legislation, through an advertised appointment process. The terminology is different, but the meaning is the same. The commission can continue to make appointments based on individual merit, through the non-advertised appointment process, under section 33 of the Act.

Bill C-25 does not refer specifically to processes based on individual merit, but it allows such processes to be used to staff a position. The Public Service Commission will continue to determine when and how individual merit will be used. This is not new.

What is new is that the bill replaces the courts' rigid interpretation of the merit principle with a new approach that allows the commission to take more factors such as employment equity into account. This was not part of the current legislation and was used by exception. The courts' current interpretation of merit does not allow this type of factor to come into play. The best candidate must always be chosen and the courts' imposed rigid and prescriptive rules on how to determine who the best candidate is.

Bill C-25 goes much further to protect us from abuse in the use of individual merit. It specifies that a manager's abuse of authority in the appointment process is grounds for a complaint to the Public Service Staffing Tribunal. This is new.

There is a whole array of mechanisms to protect us from other abuses in this area. For instance, there is the Public Service Commission's authority and its ability to delegate that authority. The commission usually delegated its authority to the deputy minister, who in turn delegated authority to a manager. The commission had to regularly monitor and audit the way things were proceeding with what few staff and resources it had. It did not always do this work in a continuous or sustained manner.

For instance, the commission had the authority to investigate. It could conduct audits. There are many other new elements.



During his speech yesterday, the Honourable Senator Di Nino cited Ms. Sheila Fraser's report on the Radwanski case. The report was cited almost in its entirety to support his argument. Page 2069 reads:

We need to ensure that qualifications cannot be changed without the agreement of the Public Service Commission. Surely we ought to have learned something from the Privacy Commissioner's fiasco.

What is the connection with the merit principle? None. Position classification is the responsibility of the employer, not the Public Service Commission.

Quoting the Auditor General of Canada, in connection with Bill C-25:

It is my interpretation of Bill C-25 that the role of the Public Service Commission is clarified...

As we are doing.

...and becomes much more of a surveillance role, one that is more demanding than at present. I think this is likely to do a great deal to help in such situations.

Let us talk about the amendment proposed by Senator Di Nino. He referred to bureaucratic favoritism, which is important, I will admit. It is, however, covered in the bill.

One of the grounds for complaints to the staffing tribunal is bureaucratic favouritism. This is an abuse of power, which can be challenged.

Deputy heads currently have the power to establish the required qualifications for a position, and this is continued. The terms have been changed. In the past, they spoke of "selection standards," and then it was stated that the position required the person to possess certain qualifications. Now the term is qualifications, not selection standards. Now deputy heads have the power to establish the qualifications for a position, this being included in Bill C-25 under subsection 30(2). Obviously, the qualifications required for staffing a position vary according to the development of new knowledge, the strengths and weaknesses of the incumbents, the changing needs of a good administration. People have to keep up to date, so position qualifications are certainly subject to change. If the position is for a lawyer, an engineer, a position with specific requirements, people have to meet these requirements. The employer will make the decisions, not the Public Service Commission. This is, in my opinion, a step in the right direction.

If the Public Service Commission were responsible, as Senator Di Nino suggests, for monitoring all changes and the qualification process, it would never end. The commission would be responsible for monitoring every standard, and that might not speed up the process. Bill C-25 proposes exactly the opposite. Its purpose is to let managers manage and administer their departments.

It is essential, in the spirit of Bill C-25, to accelerate the process. There must also be serious monitoring of implementation and of the performance of each public servant and manager, with respect to the hiring process. These aims are clearly part of Bill C-25.

Bill C-25 contains solid measures to protect against bureaucratic favouritism. Our committee held nine meetings and heard 42 witnesses. The subject came up several times, and I heard no criticism of this. Incidentally, I do not know why this issue is being raised at third reading.

Clause 17 of the bill requires the Public Service Commission to conduct audits. Its authority has been enhanced and powers given. The commission must ensure that appointments are made on the basis of merit. It must ensure that there are ongoing audits. The commission will have the human and financial resources necessary to do the work.

I do not understand why anyone would suggest that the commission should set the qualification standards. That is not part of the spirit of the bill. The power has been transferred to the employer, which is the Treasury Board, and delegated to the manager.

• (1550)

Therefore, the Treasury Board is responsible and, through delegation, so are those charged with the administration of the public service.

Senator Beaudoin, in his main amendment, wants to add bureaucratic favouritism. He talked in particular about relative merit versus individual merit. There is not much difference between the two. One is a system; the other is a function.

Re-establishing subsection 32 in its current form in Bill C-22 and re-establishing the previous legislation is inconsistent with the spirit of this legislation. It is even inconsistent with Senator Beaudoin's amendment. Agreeing to Senator Di Nino's amendment would be a step backward and would go against the spirit or the scope of Senator Beaudoin's amendment.

Honourable senators, I want to reserve the right to speak at third reading. Senator Di Nino's amendment, made in good faith, would greatly undermine this legislation. In my opinion, these two amendments would constitute a setback in terms of the intent of Bill C-25. We should adopt Bill C-25, but not the amendments before the House.

[English]

**Hon. Consiglio Di Nino:** Honourable senators, there should be little doubt in the minds of honourable senators that I have great respect for Senator Gauthier. My intervention was based on the horror story that the Auditor General discovered and imparted to this house. As Senator Gauthier properly said, most of my speech was comprised of quotes from her report because that was where I found my inspiration. The amendment was intended to be useful.

**The Hon. Serge Joyal (The Hon the Acting Speaker):** Senator Di Nino, the time allocated to Senator Gauthier for his intervention has elapsed. Is the honourable senator requesting leave to continue?

**Senator Di Nino:** I would ask leave to continue for a moment.

**The Hon. the Acting Speaker:** Is it agreed, honourable senators?

**Hon. Senators:** Agreed.

**The Hon. the Acting Speaker:** Senator Gauthier, would you accept a question from Senator Di Nino?

**Senator Gauthier:** Yes.

**Senator Di Nino:** Thank you, honourable senators. The amendment was intended in good faith to try to improve the bill such that it would result in the prevention of such activities in the future. I respect the good points that Senator Gauthier made in his statements.

My question for the honourable senator is this: Do you believe that Bill C-25, in its present form, has sufficient provisions to ensure that the kinds of abuses that have occurred — possibly criminal — would be eliminated?

**Senator Gauthier:** I believe that Bill C-25 has sufficient provisions to do that, and I will tell you why. It begins with a big "if" in respect of the people responsible for the implementation of Bill C-25 from the Public Service Commission side, and the surveillance of the merit principle.

[Translation]

If the public service audit process is truly meaningful, I believe it will work. However, the Treasury Board is responsible for its proper administration and management. If the system is in place, with proper monitoring and serious audits, this will work. The problem in Mr. Radwanski's case is that he was not audited, not by the Auditor General, not by Treasury Board and not by the Public Service Commission. The two reports were presented after the fact. There was a realization that staffing procedures were not normal. There were overclassifications. People played with the system thinking that no one was watching. With good monitoring and good implementation, Bill C-25 will work.

[English]

**Senator Di Nino:** Obviously, I did not succeed in achieving my objective, at least in the eyes of Senator Gauthier. That is the big "if." People who do not respect the rules indulge in activities of abuse and of criminality. They commit acts that lead to criminal activity.

Would the honourable senator have a better amendment to recommend, because he appears to be quite conversant with this issue? Would the honourable senator have a better amendment that I could support so that the objective of the amendment I moved yesterday could be accomplished?

**Senator Gauthier:** I must admit that it is not my intention to amend this bill at this time. I have had a long history over the years in the affairs of the public service. I was there when Mr. D'Avignon submitted his report on the merit principle in the 1970s. I was there when Mr. Finkelman submitted his reports on public service administration. I was present and active at that time. During my career spanning 20 years in the House of Commons, I was the party critic for eight years on matters of the public service. I was aware of the problems. It is my understanding that the honourable senator is talking about criminal activity, and that cannot be correct. I am not saying that there was any, but you are telling me that such allegations may have been made. Madam Robillard, President of Treasury Board, and I do not believe that there were any criminal activities.

**Senator Di Nino:** — or abuses.

**Senator Gauthier:** That is so for the time being.

**The Hon. the Acting Speaker:** Are honourable senators ready for the question on the sub-amendment?

On motion of Senator Comeau, debate adjourned.

[Translation]

## PARLIAMENT OF CANADA ACT

### BILL TO AMEND—SECOND READING— ORDER STANDS

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Graham, P.C., for the second reading of Bill C-34, An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence.

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, the honourable senators who wish to speak are invited to do so, with the usual sequence of the opposition going second, with a speaking time of 45 minutes.

Order stands.

• (1600)

## SOCIAL AFFAIRS, SCIENCES AND TECHNOLOGY

### NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO MEET DURING SITTING OF THE SENATE WITHDRAWN

On the Order:

That the Standing Senate Committee on Social Affairs, Science and Technology have power to sit at 2 p.m., Tuesday, October 7, 2003, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.



**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, this motion is no longer relevant, since the date in question is passed. I move, with the honourable senators' consent, that this motion be withdrawn from the Order Paper.

**The Hon. the Acting Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion withdrawn.

#### ADJOURNMENT

Leave having been given to revert to Government Notice of Motions:

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(h), I move:

That when the Senate adjourns today, it do stand adjourned until Monday, October 20, 2003, at 2 p.m.

**Hon. Marcel Prud'homme:** Honourable senators, some senators already have commitments on Monday, October 20 and the Friday of the following week. The purpose of my question is to make it easier for us to organize our schedules. We are talking about sitting on Monday, October 20 rather than Tuesday, October 21, and I agree with that. Do you intend to do the same for the three weeks thereafter?

**Senator Robichaud:** Honourable senators, I understand the question very well. The honourable senator wants to know whether it is possible that the Senate might sit on Mondays and Fridays. I would say yes, but if we feel this is necessary, we will try to inform the honourable senators as soon as possible through the Senate.

**The Hon. the Acting Speaker:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

Motion agreed to.

The Senate adjourned until Monday, October 20, 2003, at 2 p.m.

## APPENDIX

## OFFICE OF THE NATIONAL CHIEF

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Assembly of First Nations

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## BUREAU DU CHEF NATIONAL

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Assemblée des Premières Nations

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October 2, 2003

Senator Thelma Chalifoux  
Chairperson  
Senate Standing Committee on Aboriginal Peoples  
Parliament Buildings Wellington Street  
Ottawa, Ontario  
K1A 0A4

Dear Senator Chalifoux and Members of the Senate Committee on Aboriginal Peoples:

The AFN has been invited to comment on how the *Powley* decision might affect Bill C-6. However, a few preliminary remarks are in order. Before commenting on *Powley*, it is necessary to make clear the context concerning larger issues surrounding Bill C-6.

For several years, the AFN and federal officials participated in a Joint Task Force ("JTF") to consider the requirements of an effective specific claims body. In an unprecedented spirit of partnership, the JTF produced a model of a sound and effective system. The exercise should have stood as a landmark in cooperative policy development.

Instead, the federal government rejected the model suggested by the JTF and terminated consultations. It produced a Bill that continues, rather than resolves, the problems of the past, including delay and conflict of interest on the part of the federal government.

The AFN has repeatedly called for a return to direct Canada-AFN discussions aimed at producing a genuinely just and effective Bill. So far, this has not happened.



It is not too late. Despite all that has happened, a federal government that wishes to return to constructive, mutually-respectful and results-oriented dialogue will find a willing partner in the AFN.

Serious legal and constitutional issues have been identified with Bill C-6. The Bill is not only unsound in policy terms, but incompatible with principles of natural justice, including the need for an adjudicative body to be genuinely independent. A fiduciary must not only avoid conflicts of interest, but address breaches of its obligations to First Nations with reasonable speed and without arbitrarily excluding whole categories of First Nations claimants - such as those who were unilaterally promised reserves they have never received. With respect, these issues were not adequately recognized or addressed by the Senate Committee on Aboriginal Peoples. On some issues, very basic misunderstandings seem to remain. Basic fairness requires no less.

Over a year ago, the AFN openly tabled a detailed legal analysis of the Bill. The concerns expressed stand. They are supported by case law that is no less important than *Powley*. It would be unfortunate if First Nations find that going to the courts is the only path through which to find a forum that will respond constructively to these concerns. The Senate Committee on Legal and Constitutional Affairs ought to be given a full opportunity to now study the issues raised, and consider how they can be addressed constructively. If Justice has any technical responses, they ought to be documented and released for public scrutiny and comment.

The Senate amendments proposed so far are inadequate. The AFN has never been given an opportunity to comment on them before a Senate committee.

One amendment "allows" individual claimants to send in suggestions about the appointment of Commissioners, but the Minister retains the power to appoint.

No statutory role is given to the AFN, a national body that has the delegated authority from First Nations to coordinate suggestions and partner with the federal government in ensuring that only qualified and impartial persons are appointed.

The amendment that would increase the cap on individual claims by \$3 million (to \$10 million) is too small a step in the right direction. Most claims - on the basis of any independent and credible projections - would be denied access to the tribunal.

Another amendment addresses an extremely limited aspect of the conflict of interest issue. Federal control over appointments and reappointments remains. So does the privileged access of federal public servants (but not members of First Nations institutions) to positions on the new bodies.



Another amendment allows a claimant before the Commission to go to the Tribunal to apply for a subpoena. This route is an inadequate substitute for the right that is being stripped from claimants; to obtain a public inquiry from the Commission on a claim with a public report to follow. The minority will be able to proceed to the Tribunal; claims above the cap will have no effective means of pressuring a federal government that is unreasonably stalling or denying a claim.

The federal government still has a chance to meet with the AFN, restore the spirit of partnership, and work together to produce a specific claims Bill that will benefit all Canadians. Moving rapidly to resolve specific claims will promote economic and social development among First Nations and their surrounding communities. It will remove a longstanding obstacle to reconciliation, and help to shift the focus of the First Nations-federal relationships from redressing the past to building the future together. If the federal government instead pushes ahead unilaterally to impose a fundamentally unjust Bill, First Nations will have no choice but to consider and pursue with vigor their legal and political remedies.

The AFN has been asked with very short notice to comment on the *Powley* decision.

Let there be no doubt about some basic principles:

First, the AFN supports reasonable and just responses to the just claims of all aboriginal peoples, including the Inuit and Metis.

Second, the AFN recognizes pluralism among First Nations and among the peoples named in s. 35 of the *Constitution Act, 1982*. Equality does not require, or even permit in some cases, an identical treatment of different groups. Their distinctive histories, rights, interests and political choices must be taken into account in appropriate ways.

Turning now to particulars, it is important to recognize that *Powley* is not the only relevant decision handed down by the Supreme Court of Canada that is relevant. In the *Blais* case, the Supreme Court of Canada ruled that Metis are not "Indians" for the purposes of the *Constitution Act, 1930*. It appears that the reasons of the Court would surely also apply to the issue of whether Metis are Indians for the purpose of s. 91(24), *Constitution Act, 1867*. The Court has acknowledged, in other words, that First Nations and Metis have, for at least some important purposes, different constitutional histories and positions. In the *Lovelace* case, the Supreme Court of Canada had recognized that the distinctive legal and social position of First Nations means that a government can design programs in partnership with First nations that extend to them only, and do not necessarily include the Metis. This is not in any way to deny that Metis are entitled aboriginal people; or that governments have (e.g., the *Manitoba Act*, the *Alberta legislation* on Metis settlements) crafted distinctive programs to address Metis rights.





In addressing specific claims, it is reasonable and appropriate for the federal government and the AFN to develop, in particular, and operate in collaboration, a system that addresses First Nations claims. For over a century, the *Indian Act* has operated to vest a larger and larger measure of control over Indian lands and assets in First Nations. It is from this statute that many specific claims arise. The *Indian Act*, as the Supreme Court of Canada observes in *Blais*, drew a clear distinction between Indians and Metis.

The AFN recognizes that Metis organizations have brought claims based on their own distinctive constitutional histories and rights. It would welcome the just and prompt resolution of those issues by provincial governments. Perhaps there may even be a role for the federal government to play.

However, given the long history of justice denied to First Nations in the context of specific claims, First Nations cannot be expected to wait while yet a new process of consultation unfolds. After earlier efforts over decades failed to produce consensus, bilateral discussions between the AFN and the federal officials produced the JTF model, and it is long overdue that a just system based on that model be implemented.

One of the most problematic aspects of Bill C-6 is its attempt to eliminate the AFN from its role – fully recognized in, and by, the Joint Task Force – of coordinating and effectively representing First Nations opinion on appointments and in the three-year review of the new system. Few organizations operate as democratically as the AFN. A National Chief needs a mandate from a full 60% of Chiefs who represent the overwhelming majority of First Nations. No organization is better suited to consult with and speak for claimants and potential claimants. Its position on Bill C-6 is supported by regional and individual First Nations across Canada. There is no split between the “grass roots” and the leadership. First Nations across Canada will not accept any attempt by the federal government to exclude the AFN from full participation in the creation or operation of a truly just and effective system by using the rationale that Canada is home to other Aboriginal peoples besides First Nations. The federal government should be prepared to engage in separate policy processes with each of the AFN and, when and where appropriate, the proper representatives of the Metis.

The federal government continues to under fund the resolution of specific claims. The backlog grows. Debts that involve the honour of the Crown and lawful obligations remain unpaid. Communities continue to suffer. There must be an increased federal commitment to honouring its obligations. The AFN does not accept any potential federal model in which the claims of Metis are added to the claimants on the same or even shrinking allocation. Metis claims, not yet defined sufficient to rely on, should be addressed in their own right, on their merits, and federal and provincial governments must provide whatever additional funding is



required out of their own resources – rather than further denying and depriving First Nations.

It might be noted, incidentally, that *Powley* dealt with a site-specific claim. The Metis claim in that particular case would not fall within the mandate of the specific claims body under either the JTF model or Bill C-6. At federal insistence, neither model permits claims based on aboriginal rights or title to be brought forward. It might also be observed that the federal government has insisted on narrowing the scope of "specific claims" in other ways (e.g., excluding claims less than 15 years old) in order to permit a better focus. There are no doubt challenging, complex and distinctive issues involving the Metis that could be, and should be, the appropriate subject of another dialogue and another system.

In the meantime, the AFN hopes and expects that the federal government will finally pick up where the JTF left off, and restore reason and dialogue to the creation of a just effective, independent and accessible process for resolving specific claims.

Sincerely,



Phil Fontaine  
National Chief





**THE SENATE OF CANADA**  
**PROGRESS OF LEGISLATION**  
**(2nd Session, 37th Parliament)**  
**Thursday, October 9, 2003**

**GOVERNMENT BILLS**  
**(SENATE)**

<b>No.</b>	<b>Title</b>	<b>1<sup>st</sup></b>	<b>2<sup>nd</sup></b>	<b>Committee</b>	<b>Report</b>	<b>Amend</b>	<b>3<sup>rd</sup></b>	<b>R.A.</b>	<b>Chap.</b>
S-2	An Act to implement an agreement, conventions and protocols concluded between Canada and Kuwait, Mongolia, the United Arab Emirates, Moldova, Norway, Belgium and Italy for the avoidance of double taxation and the prevention of fiscal evasion and to amend the enacted text of three tax treaties.	02/10/02	02/10/23	Banking, Trade and Commerce	02/10/24	0	02/10/30	02/12/12	24/02
S-13	An Act to amend the Statistics Act	03/02/05	03/02/11	Social Affairs, Science and Technology	03/04/29	0	03/05/27		

**GOVERNMENT BILLS**  
**(HOUSE OF COMMONS)**

<b>No.</b>	<b>Title</b>	<b>1<sup>st</sup></b>	<b>2<sup>nd</sup></b>	<b>Committee</b>	<b>Report</b>	<b>Amend</b>	<b>3<sup>rd</sup></b>	<b>R.A.</b>	<b>Chap.</b>
C-2	An Act to establish a process for assessing the environmental and socio-economic effects of certain activities in Yukon	03/03/19	03/04/03	Energy, the Environment and Natural Resources	03/05/01	0	03/05/06	03/05/13	7/03
C-3	An Act to amend the Canada Pension Plan and the Canada Pension Plan Investment Board Act	03/02/26	03/03/25	Banking, Trade and Commerce	03/03/27	0	03/04/01	03/04/03	5/03
C-4	An Act to amend the Nuclear Safety and Control Act	02/12/10	02/12/12	Energy, the Environment and Natural Resources	03/02/06	0	03/02/12	03/02/13	1/03
C-5	An Act respecting the protection of wildlife species at risk in Canada	02/10/10	02/10/22	Energy, the Environment and Natural Resources	02/12/04	0	02/12/12	02/12/12	29/02
C-6	An Act to establish the Canadian Centre for the Independent Resolution of First Nations Specific Claims to provide for the filing, negotiation and resolution of specific claims and to make related amendments to other Acts	03/03/19	03/04/02	Aboriginal Peoples	03/06/12	5	referred back to Committee 03/09/25		
C-8	An Act to protect human health and safety and the environment by regulating products used for the control of pests	02/10/10	02/10/23	Social Affairs, Science and Technology	02/12/10	0	02/12/12	02/12/12	28/02
C-9	An Act to amend the Canadian Environmental Assessment Act	03/05/06	03/05/13	Energy, the Environment and Natural Resources	03/06/04	0	03/06/05	03/06/11	9/03

No.	Title	1 <sup>st</sup>	2 <sup>nd</sup>	Committee	Report	Amend	3 <sup>rd</sup>	R.A.	Chap.
C-10	An Act to amend the Criminal Code (cruelty to animals and firearms) and the Firearms Act	02/10/10	02/11/20	Legal and Constitutional Affairs	02/11/28	Divided Message from Commons concurring with division 03/05/07			
C-10A	An Act to amend the Criminal Code (firearms) and the Firearms Act	-	-	Legal and Constitutional Affairs	02/11/28	0	02/12/03	03/05/13	8/03
C-10B	An Act to amend the Criminal Code (cruelty to animals)	-	-	Legal and Constitutional Affairs	03/05/15	5	03/05/29 Message from Commons- agree with two amendments, disagree with two, and amend one 03/06/09 Referred to committee 03/06/11 Reported 03/06/12 Report adopted (insist on one, replace one, amend one) 03/06/19 Message from Commons- disagree with Senate's amendments 03/09/30		
C-11	An Act to amend the Copyright Act	02/10/10	02/10/30	Social Affairs, Science and Technology	02/12/05	0	02/12/09	02/12/12	26/02
C-12	An Act to promote physical activity and sport	02/10/10	02/10/23	Social Affairs, Science and Technology	02/11/21	0 + 1 at 3 <sup>rd</sup> 02/12/04 2 at 3 <sup>rd</sup> 03/02/04	03/02/04	03/03/19	2/03
C-14	An Act providing for controls on the export, import or transit across Canada of rough diamonds and for a certification scheme for their export in order to meet Canada's obligations under the Kimberley Process	02/11/19	02/11/26	Energy, the Environment and Natural Resources	02/12/04	0	02/12/05	02/12/12	25/02



No.	Title	1 <sup>st</sup>	2 <sup>nd</sup>	Committee	Report	Amend	3 <sup>rd</sup>	R.A.	Chap.
C-15	An Act to amend the Lobbyists Registration Act	03/03/19	03/04/03	Rules, Procedures and the Rights of Parliament	03/05/14	1	03/05/28 Message from Commons-agree with amendment 03/06/09	03/06/11	10/03
C-17	An Act to amend certain Acts of Canada, and to enact measures for implementing the Biological and Toxin Weapons Convention, in order to enhance public safety	03/10/08							
C-21	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2003	02/12/05	02/12/10	-	-	-	02/12/11	02/12/12	27/02
C-24	An Act to amend the Canada Elections Act and the Income Tax Act (political financing)	03/06/11	03/06/16	Legal and Constitutional Affairs	03/06/19	0	03/06/19	03/06/19	19/03
C-25	An Act to modernize employment and labour relations in the public service and to amend the Financial Administration Act and the Canadian Centre for Management Development Act and to make consequential amendments to other Acts	03/06/03	03/06/13	National Finance	03/09/18	0			
C-28	An Act to implement certain provisions of the budget tabled in Parliament on February 18, 2003	03/05/27	03/06/04	National Finance	03/06/12	0	03/06/19	03/06/19	15/03
C-29	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2003	03/03/25	03/03/26	-	-	-	03/03/27	03/03/27	3/03
C-30	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2004	03/03/25	03/03/26	-	-	-	03/03/27	03/03/27	4/03
C-31	An Act to amend the Pension Act and the Royal Canadian Mounted Police Superannuation Act	03/06/03	03/06/11	National Security and Defence	03/06/16	0	03/06/17	03/06/19	12/03
C-34	An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence	03/10/02							
C-35	An Act to amend the National Defence Act (remuneration of military judges)	03/06/13	03/09/18	Legal and Constitutional Affairs					
C-39	An Act to amend the Members of Parliament Retiring Allowances Act and the Parliament of Canada Act	03/06/03	03/06/11	Legal and Constitutional Affairs	03/06/19	0	03/06/19	03/06/19	16/03
C-41	An Act to amend certain Acts	03/10/07							
C-42	An Act respecting the protection of the Antarctic Environment	03/06/13	03/09/17	Energy, the Environment and Natural Resources	03/09/18	0	03/10/07		

No.	Title	1 <sup>st</sup>	2 <sup>nd</sup>	Committee	Report	Amend	3 <sup>rd</sup>	R.A.	Chap.
C-44	An Act to compensate military members injured during service	03/06/13	03/06/13	National Security and Defence	03/06/16	0	03/06/18	03/06/19	14/03
C-47	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2004	03/06/13	03/06/17	-	-	-	03/06/18	03/06/19	13/03

## COMMONS PUBLIC BILLS

No.	Title	1 <sup>st</sup>	2 <sup>nd</sup>	Committee	Report	Amend	3 <sup>rd</sup>	R.A.	Chap.
C-205	An Act to amend the Statutory Instruments Act (disallowance procedure for regulations)	03/06/16	03/06/19	-	-	-	03/06/19	03/06/19	18/03
C-212	An Act respecting user fees	03/09/30							
C-227	An Act respecting a national day of remembrance of the Battle of Vimy Ridge	03/02/25	03/03/26	National Security and Defence	03/04/02	0	03/04/03	03/04/03	6/03
C-249	An Act to amend the Competition Act	03/05/13	03/09/17	Banking, Trade and Commerce					
C-250	An Act to amend the Criminal Code (hate propaganda)	03/09/18							
C-300	An Act to change the names of certain electoral districts	02/11/19	03/06/03	Legal and Constitutional Affairs					
C-411	An Act to establish Merchant Navy Veterans Day	03/06/12	03/06/17	National Security and Defence	03/06/18	0	03/06/19	03/06/19	17/03

## SENATE PUBLIC BILLS

No.	Title	1 <sup>st</sup>	2 <sup>nd</sup>	Committee	Report	Amend	3 <sup>rd</sup>	R.A.	Chap.
S-3	An Act to amend the National Anthem Act to include all Canadians (Sen. Poy)	02/10/02	03/06/10	Social Affairs, Science and Technology					
S-4	An Act to provide for increased transparency and objectivity in the selection of suitable individuals to be named to certain high public positions (Sen. Stratton)	02/10/02							
S-5	An Act respecting a National Acadian Day (Sen. Comeau)	02/10/02	02/10/08	Legal and Constitutional Affairs	03/06/03	2	03/06/05	03/06/19	11/03
S-6	An Act to assist in the prevention of wrongdoing in the Public Service by establishing a framework for education on ethical practices in the workplace, for dealing with allegations of wrongdoing and for protecting whistleblowers (Sen. Kinsella)	02/10/03							
S-7	An Act to protect heritage lighthouses (Sen. Forrestall)	02/10/08	03/02/25	Social Affairs, Science and Technology	03/06/19	0	03/09/24		
S-8	An Act to amend the Broadcasting Act (Sen. Kinsella)	02/10/09	02/10/24	Transport and Communications	03/03/20	0	03/04/02		
S-9	An Act to honour Louis Riel and the Metis People (Sen. Chailifoux)	02/10/23	03/05/06	Legal and Constitutional Affairs					



No.	Title	1 <sup>st</sup>	2 <sup>nd</sup>	Committee	Report	Amend	3 <sup>rd</sup>	R.A.	Chap.
S-10	An Act concerning personal watercraft in navigable waters (Sen. Spivak)	02/10/31	03/02/25	Energy, the Environment and Natural Resources	03/09/18	0			
S-11	An Act to amend the Official Languages Act (promotion of English and French) (Sen. Gauthier)	02/12/10	03/05/07	Official Languages					
S-12	An Act to repeal legislation that has not been brought into force within ten years of receiving royal assent (Sen. Banks)	02/12/11	03/02/27	Legal and Constitutional Affairs					
S-14	An Act to amend the National Anthem Act to reflect the linguistic duality of Canada (Sen. Kinsella)	03/02/11	03/06/17	Official Languages					
S-15	An Act to remove certain doubts regarding the meaning of marriage (Sen. Cools)	03/02/13	Dropped from Order Paper pursuant to Rule 27(3) 03/06/05						
S-16	An Act to amend the Constitution Act, 1867 and the Parliament of Canada Act (Speakership of the Senate) (Sen. Oliver)	03/03/18							
S-17	An Act respecting the Canadian International Development Agency, to provide in particular for its continuation, governance, administration and accountability (Sen. Bolduc)	03/03/25	03/06/19	National Finance					
S-18	An Act to amend the Criminal Code (lottery schemes) (Sen. Lapointe)	03/04/02							
S-20	An Act to amend the Copyright Act (Sen. Day)	03/05/15	03/10/07	Banking, Trade and Commerce (withdrawn) 03/10/08					
S-22	An Act respecting America Day (Sen. Grafstein)	03/09/16		Social Affairs, Science and Technology					
S-23	An Act to prevent unsolicited messages on the Internet (Sen. Oliver)	03/09/17							

## PRIVATE BILLS

No.	Title	1 <sup>st</sup>	2 <sup>nd</sup>	Committee	Report	Amend	3 <sup>rd</sup>	R.A.	Chap.
S-19	An Act respecting Scouts Canada (Sen. Di Nino)	03/05/14	03/06/09	Legal and Constitutional Affairs					
S-21	An Act to amalgamate the Canadian Association of Insurance and Financial Advisors and The Canadian Association of Financial Planners under the name The Financial Advisors Association of Canada (Sen. Kirby)	03/06/03	03/06/09	Banking, Trade and Commerce					

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CANADA

# Debates of the Senate

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2nd SESSION

•

37th PARLIAMENT

•

VOLUME 140

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NUMBER 85

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OFFICIAL REPORT  
(HANSARD)

**Monday, October 20, 2003**

—◆—  
**THE HONOURABLE DAN HAYS  
SPEAKER**



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(Daily index of proceedings appears at back of this issue).

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## THE SENATE

Monday, October 20, 2003

The Senate met at 2 p.m., the Speaker in the Chair.

Prayers.

[Translation]

### ROYAL ASSENT

Hon. the Speaker informed the Senate that the following communication had been received:

#### RIDEAU HALL

October 20, 2003

Mr. Speaker,

I have the honour to inform you that the Right Honourable Adrienne Clarkson, Governor General of Canada, signified royal assent by written declaration to the bill listed in the Schedule to this letter on the 20th day of October, 2003 at 9:14 a.m.

Yours sincerely,

Barbara Uteck  
Secretary to the Governor General

The Honourable  
The Speaker of the Senate  
Ottawa

Bill Assented to Monday, October 20, 2003:

An Act respecting the protection of the Antarctic Environment (*Bill C-42, Chapter 20, 2003*)

[English]

## SENATORS' STATEMENTS

### POLITICAL PARTY SYSTEM

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, our Canadian system of governance, as with all models of government, has or ought to have as its objective the public interest and common good of its society. Since 1867, the public interest in the practise of Canadian freedom has been well served by our Canadian system of parliamentary democracy. Notwithstanding a number of bumps along the road, social justice and progress have enjoyed a grand success. Clearly, there must be something right about our system of governance, just as with the British Westminster parliamentary model, this system is based on successful political parties.

We are witness today in Canada to important developments in the Liberal and Conservative parties. It is good that the development remains focused on the primary objective, which is

the good of Canadian society more than the good of any political movement.

I encourage all Canadians to take an active role in this period of partisan discernment. In particular, I extend best wishes to my friends in the Liberal Party of Canada as they prepare for their leadership convention and set in place the appropriate mechanisms to embrace the various policy attitudes.

Indeed, any political party that is more focused on the good of the country, rather than itself, needs to identify the methodology and means to accommodate within national parties a spectrum of policy attitudes. As R.M. Punnett wrote in his book *British Government and Political Parties*, at page 105:

Thus the existence of a predominantly two-party system in Britain does not necessarily mean that numerous different policy attitudes are not to be found within the community — it means that numerous different policy attitudes are contained in the two parties. Thus in a sense, every Government in Britain is a "coalition" of the several interests, elements and attitudes that are covered by the broad umbrella of the Labour or Conservative Party label.

Honourable senators, it is noteworthy that the discernment process currently underway by many Canadian Conservatives is being guided by such principles as progressive social policy; right to health care regardless of income; regional, cultural and socio-economic diversity; individual rights and responsibilities; equality of all Canadians; equality of the English and French communities in Canada; the right to security and privacy; the right of the individual; environmental rights; the right to own property; solidarity rights for the peoples of the world; and the right to fair trade.

Guided by these principles, Canadians wish Conservatives well during this period of discernment for the greater good of our parliamentary system of governance.

[Translation]

THE HONOURABLE  
LOUIS J. ROBICHAUD, P.C., Q.C., C.C.

CONGRATULATIONS ON RECEIVING RED CROSS  
HUMANITARIAN AWARD

Hon. Marilyn Trenholme Counsell: Honourable senators, I am proud to extend my congratulations to our former colleague, the Honourable Louis J. Robichaud who, last week, on October 15, received the humanitarian award of the New Brunswick Red Cross.

In so doing, he has joined the ranks of a number of highly distinguished New Brunswickers: Herzel Herchetsky, the Honourable Margaret Norrie McCain, the Honourable Gordon Fairweather, retired Supreme Court Justice Gérard LaForest and another former colleague here in the Senate, the Honourable Erminie Cohen.

Among the other honours this gentleman has recently received are the following: a certificate of honorary membership in the Association des enseignantes et des enseignants francophones retraités du Nouveau-Brunswick; a Life Membership in the Law Society of New Brunswick; the New Brunswick Pioneer of Human Rights Award; the Order of New Brunswick 2002; the Prix de mérite, Association des enseignantes et enseignants francophones du Nouveau-Brunswick; an honorary graduation diploma from l'Ecole Louis-J. Robichaud; and the presentation by the Université de Moncton of a copy of the University's original charter.

• (1410)

What is more, on October 25, 2003, he will be receiving the Légion d'honneur from France. Our friend, "le petit Louis" is an inspiration to us all. His message is clear: never cease working to ensure equal opportunities for all. The Red Cross humanitarian award he received on October 15 was just one more recognition of his passion and his many wonderful contributions to New Brunswick and to Canada.

[English]

## GOVERNOR GENERAL

### STATE VISITS TO FINLAND AND ICELAND

**Hon. Bill Rompkey:** Honourable senators, all of us who accompanied Their Excellencies on the recent visit to Finland and Iceland witnessed the extraordinary leadership they give to this country. The Governor General led a group that had more depth and breadth than any other I had been on in 30 years of parliamentary life. With Senator Oliver, Karen Kraft-Sloan and myself were architects, winemakers, musicians, art gallery directors, anthropologists, writers, businessmen and Aboriginal leaders from the Arctic. It was this diverse mixture that Their Excellencies presented to the circumpolar world as the face of Canada.

The offer to these countries was to join us in a partnership to protect and enhance our neighbourhood, the polar region. In their thoughts, in their words, in the power of their personalities, Adrienne Clarkson and John Ralston Saul drove home the message that the health of the northern ecosystem and northern peoples is important, not just for that region, but also for the world. That is why organizations like the Arctic Council and the University of the Arctic are so important. It is a message that southern Canadians need to hear, and it was delivered to our northern neighbours by two of our finest ambassadors.

The reception we received from presidents and fishermen, from mayors and reindeer herders was in marked contrast to carping

criticism here at home, including some from members of my own party in the other place. For me, this criticism is a product of narrow minds and parochial thinking. Canada has an important role to play in the circumpolar world.

Although Labrador is subarctic, it nevertheless feels part of the polar world. Visiting with friends and neighbours to discuss common issues is essential to its enhancement. The rapidly melting ice cap and the plethora of seals in our northern waters are just two warning signs that we need to address our problems in the polar region jointly as well as severally.

Honourable senators, this was the finest Canadian mission that I have witnessed, and it was an honour for me to be part of it.

## NATIONAL SECURITY AND DEFENCE

### NEW BRUNSWICK—ALLEGATIONS OF CAMPBELLTON AS ENTRY POINT BY ILLEGAL ALIENS

**Hon. Colin Kenny:** Honourable senators, there was some interest expressed in this chamber on Thursday, October 9, 2003, about one of the recent hearings of the Standing Senate Committee on National Security and Defence, which I chair. Permit me to provide some background information on this matter.

During the third week in September, our committee held public hearings in Halifax on coastal defence and first responders. It is our intention to table reports on these subjects in the near future.

At the public hearing on coastal defence held on Monday afternoon, September 22, we heard testimony from officials from the Canada Customs and Revenue Agency. During this meeting, one of the committee members asked these officials about illegal migrants arriving by boat at Campbellton, New Brunswick. The officials indicated they were unaware of such illegal activities. A copy of the proceedings is available for anyone interested in reading this exchange.

Honourable senators, this is simply a case of an individual senator asking questions that he deemed to be relevant to the subject under discussion. A number of newspapers carried articles about this exchange, but upon reviewing them, it is clear from all the articles that I have seen that it was an individual senator asking questions.

A concern was raised subsequently in this chamber about "what evidence there is to support the claim made by the National Security and Defence Committee that illegal aliens are coming into North America via the port of Campbellton, New Brunswick."

I can assure my honourable colleagues that the committee has not expressed a view on this specific issue, and there has been no indication in our deliberations on coastal defence that there will be any comment about Campbellton in our forthcoming report.

In closing, I want to underline that the Standing Senate Committee on National Security and Defence is a conscientious and hard-working committee that has a proven track record in conducting studies carefully and thoroughly.



## NATIONAL DEFENCE

## SNOWBIRDS—CONDITION OF TUTOR AIRCRAFT

**Hon. Donald H. Oliver:** Honourable senators, I rise today to speak about the Snowbirds' air show. The Snowbirds are arguably one of Canada's most recognizable national symbols. About 22 months ago, I rose in this chamber to warn of the continuing deterioration of the Snowbird Tutor jet aircraft. Government authorities now confirm that the Snowbird Tutor jet aircraft are still a threat to the lives and safety of the Canadians who fly them and must be replaced as quickly as possible.

In December, I referred to a captain who had worked on Tutor aircraft maintenance for more than 20 years. At that time, he said that the Snowbirds should be grounded because they were suffering from metal fatigue and there could be a major catastrophe unless something was done about their condition. A short time later, the Department of National Defence called tenders to price out a supply of the aircraft for the Snowbirds in the future.

Now, almost two years later, this initiative is again in the news. In today's *Ottawa Citizen* and *National Post*, there are comprehensive articles detailing the need of the government to replace the aging aircraft with Hawk jets made by British Aerospace.

The *National Post* revealed it obtained an executive summary from an internal review done by the Department of National Defence. It said the following:

Replacing the Tutor is a question of "when," not "if"... With each passing year, the technical, safety and financial risk associated with extending the Tutor into its fifth decade and beyond will escalate. These risks are significant.

The cost of the project, according to the leaked report, is estimated at \$330 million. As an alternative, the military is also considering an upgrade package for its jets at an estimated cost of \$32 million. It would extend the life of the jets to 2010, but honourable senators must realize that the upgrade is only a short-term solution.

It will take approximately five years for the Hawk jets to be built in the United Kingdom, delivered and converted to the Snowbird air demonstration and for the pilots in the show to be properly trained. If that decision is made before the end of 2003, our new Snowbirds will be safely in the air for the 2009 air show, only three years after the Tutor jets reach their maximum lifespan.

My concern is that the aging, dangerous Tutors not fly anymore but be replaced. That way, the safety of pilots and Canadians will become the first and highest priority. Since their inception in 1971, five Snowbird pilots have met their deaths: four while flying or training in air shows and one in a motor vehicle accident after an air show. There was also the incident in Scotland where two Scottish jets crashed while in training for a London air show.

To these statistics, I have but one remark to make: Replacing the Tutor aircraft with updated, safe, new jets would reduce the chance of air fatalities significantly. It is time to ensure the safety of Canadian pilots.

In conclusion, I am glad to see that the government is taking steps to ensure that the Snowbirds' pilots fly mechanically sound aircraft. I believe the Snowbirds are an important symbol of and to Canada. It is imperative that they be able to update their equipment, not only to save lives but also to save the air show that has come to mean so much to so many.

## ALBERTA

## UNIVERSITY OF ALBERTA—DISCOVERY IN ELECTRICITY GENERATION

**Hon. Tommy Banks:** Honourable senators, I rise happily and proudly today to talk about an important scientific breakthrough that has just now been made at the University of Alberta. It is nothing less than a new means of generating electricity. It has apparently been known for many decades, although certainly not to me, that when a liquid such as water comes into contact with a non-conducting solid, such as glass, ceramic or stone, an interaction occurs between the two at a microscopic level that creates a charge on the surface. Because of the water next to the surface being positively charged and the solid being negatively charged, there is an interaction.

Two scientists at the University of Alberta, operating on the theory that if one put the water through a microchannel, the positive and negative ions would move so that one end becomes positive and the other negative to create, in effect, a battery, have succeeded in the first new breakthrough in electricity generation in 160 years.

University of Alberta engineering Professors Daniel Kwok, Larry Kostiuk and their associates have been able to light a small bulb by squeezing a syringe of plain, ordinary Edmonton tap water through a ceramic filter containing microscopic holes. They call it an electrokinetic battery. It can easily produce up to 10 volts at that size, roughly equivalent to a car battery but with a current of only a fraction of an ampere. It is not likely that we will be seeing this used as a flashlight generator any time soon, but the potential applications are truly shaking. This could be regarded as an effective energy source for nanotechnology applications, and could be used for powering electrical devices like palm pilots, calculators, cell phones, and so on, using water batteries. The discovery was published today by the Institute of Physics.

• (1420)

I hope honourable senators will join me today in congratulating the University of Alberta team for this outstanding breakthrough and wishing them all the luck in pursuing the exploitation of this excellent new technology.

## ROUTINE PROCEEDINGS

### NATIONAL SECURITY AND DEFENCE

#### COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

**Hon. Colin Kenny:** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(a), I move:

That the Standing Senate Committee on National Security and Defence have power to sit at 5:00 p.m. today, Monday, October 20, 2003, even though the Senate may then be sitting, and that Rule 95(4) be suspended in relation thereto.

**The Hon. the Speaker:** Honourable senators, is leave granted?

Did the Honourable Senator Prud'homme wish to withhold consent?

**Hon. Marcel Prud'homme:** No, I want to ask the usual question. How many other chairmen intend to ask permission to sit while the Senate is sitting, so that we better exercise our judgment whether or not to agree? If this were the only request for today — it being at five o'clock and not being a member of the committee myself — I would find it difficult to deny that request. However, if there are too many others who have the same kind of request, we will have to re-evaluate our rules; otherwise, there will be no honourable senators left in the Senate, they will be in committees.

If this is the only request, in this instance I will agree; however, if there are other senators who intend to ask for the same thing, please ask now. Do not take us by surprise later this afternoon by rising and asking for unanimous consent at a time when those who usually object are temporarily absent. If the honourable senator is the only one, I will not repeat the same thing, I will agree.

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

Motion agreed to.

[Translation]

### OFFICIAL LANGUAGES

#### BILINGUAL STATUS OF CITY OF OTTAWA— PRESENTATION OF PETITION

**Hon. Jean-Robert Gauthier:** Honourable senators, pursuant to rule 4(h), I have the honour to table a petition with 2,000 signatures, supplementary to the 6,000 signatures tabled last week, asking to have Ottawa, the capital of Canada, declared a bilingual city and a reflection of the country's linguistic duality. The petitioners pray and request that the Parliament of Canada consider the following:

That the Canadian Constitution provide that English and French are the two official languages of our country and have equality of status and equal rights and privileges as to their use in all institutions of the Government of Canada;

That section 16 of the Constitution Act, 1867 designates the city of Ottawa as the seat of government of Canada;

That citizens have the right in the national capital to have access to the services provided by all institutions of the Government of Canada in the official language of their choice, namely English or French;

Therefore, your petitioners ask Parliament that Ottawa, the capital of Canada, has a duty to reflect the linguistic duality at the heart of our collective identity and characteristic of the very nature of our country.

[English]

## QUESTION PERIOD

### BUSINESS OF THE SENATE

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I have a question for the Leader of the Government in the Senate. Could the minister advise the house — because I know all honourable senators would like to know the answer — of how many more Mondays she anticipates between now and Christmas the Senate will be called upon to sit?

I ask the question knowing that many honourable senators have to make advance-planning arrangements for their many commitments. Could the minister give us a rough idea as to what she anticipates for Monday sittings between now and Christmas?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, all I can indicate at this time is that as legislation requires we will be required to sit on Mondays and Fridays, if in order to have adequate time to debate the bills before us it requires sittings on Mondays and Fridays.

**Senator Kinsella:** Honourable senators, we all received a copy of the Senate calendar, subject to change, for this year. As of October 20, there are eight weeks set out between now and Christmas to deal with government legislation, and our practice is to sit from Tuesdays to Thursdays.

What legislation is it that is not already on the books in the other place, which I examined in detail this morning, that would anticipate any rush of legislation, given that later this afternoon we have a time allocation motion and there are eight more weeks? Why this rush? Why time allocation, given that we have eight more weeks?

**Senator Carstairs:** Honourable senators, in regard to the time allocation motion — and we should not really get into this because it is a motion for later this day — we have made some positive amendments to that bill and it is necessary for the other place to have adequate time to deal with those amendments, which I believe are excellent amendments



In terms of the honourable senator's more general question concerning remaining sitting days, it will depend. I am expecting as many as four new bills from the other place this week. We need time to get them to second reading, into and out of committee. It is a timely process. For example, I think we are now on our twelfth day and third reading of one bill alone.

**Senator Kinsella:** Honourable senators, the published Senate calendar, which is subject to change, has us sitting on Monday, December 15, and not sitting on Monday, December 8, or December 1, or November 24, or November 17. I am particularly interested in the week of November 17. Does the minister expect that we will be sitting on November 17, which is a Monday?

**Senator Carstairs:** At this stage, honourable senator, I do not.

It will depend on how quickly we deal with legislation prior to November 17.

• (1430)

## NATIONAL DEFENCE

### AFGHANISTAN—DEATH OF TWO SOLDIERS— AVAILABILITY OF ARMoured VEHICLES— RESIGNATION OF MINISTER

**Hon. J. Michael Forrestall:** I have a question, which I have asked at least twice before, for the distinguished Leader of the Government in the Senate. I will try once again; I believe this issue to be serious. Senator Oliver spoke earlier today about the need for safe aircraft. I have spoken a thousand times before about the need for safe helicopters — and the sooner the better.

On July 19 of this year, in combination with other remarks he was making, the Minister of National Defence said that in effect he would resign if it were found that any Canadian died as a result of a lack of preparation or equipment. Sadly, as honourable senators are aware, two Canadian soldiers died while they rode in an Ilitis light utility jeep.

The battle group commander said that he has only one third of the armoured vehicles he needs — some 30. The minister has announced that only 15 more will be available.

When will the government ship the 45 armoured vehicles the battle group requires? Will it ship them today, tomorrow, next week, or next month? Will those Canadians who have survived be back in Canada before we get around to shipping the armoured vehicles asked for?

**Hon. Sharon Carstairs (Leader of the Government):** As the honourable senator is aware, Canadian troops were well equipped when they went to Afghanistan. They had the equipment that was requested by those in command. That equipment went with them, and they began their operation with that equipment. Subsequently, what appears to be a terrorist action has caused them to reassess the dangers of some of the missions — although not all missions because some are still carried out in jeeps, on foot and in armed vehicles. That is why more armoured vehicles are now being shipped to Kabul.

**Senator Forrestall:** We know it is somewhat difficult to take the Minister of National Defence at his word for anything. I do not like to assume that ministers are prone — and find it interesting, if

you will — to making grand statements about resigning if such and such does not prove to be the case. We are beginning to understand what that means.

Would the honourable leader suggest to the Minister of National Defence that many Canadians would want the government to move as quickly as possible to send the 45 additional armoured vehicles the battle group requires, in the stated opinion of its commander. Or would the minister lend some dignity to the office of the Minister of National Defence and resign?

**Senator Carstairs:** As the honourable senator knows, the additional LAV III armoured vehicles are expected to arrive in Kabul by mid-November, and the Bisons, also ordered, will arrive shortly thereafter.

### AFGHANISTAN—AVAILABILITY OF ARMoured VEHICLES—INTENTIONS OF MINISTER FOR LASALLE-EMARD

**Hon. J. Michael Forrestall:** Honourable senators, that still leaves a substantial shortfall in the number of armoured vehicles the battle group commander believes, in his judgment, to be necessary for the safe execution of their tasks over there. It is that to which I address my question now.

If the honourable leader does not wish to put that to the Minister of National Defence and to the Prime Minister, I wonder if she would be kind enough to inquire of Mr. Paul Martin whether he could stand up somewhere in Canada during the next two or three weeks to tell us his intentions in respect of this issue?

**Hon. Sharon Carstairs (Leader of the Government):** The government intends to add to the equipment at the request of the officers on the ground and in the field in Kabul.

## CUSTOMS AND REVENUE AGENCY

### LAVAL, QUEBEC—THEFT OF COMPUTERS WITH PERSONAL INFORMATION

**Hon. Donald H. Oliver:** Honourable senators, my question is to the Leader of the Government in the Senate. On September 4, thieves stole four laptop and two desktop computers from the offices of the Canada Customs and Revenue Agency in Laval, Quebec. These computers contain the personal information and the private business files of about 120,000 Quebec residents. This incident constitutes the biggest loss of personal information in Canada to date. However, Revenue Minister Elinor Caplan did not move departmental staff from their regular duties to deal with the situation until September 19 — two weeks after the break-in.

Could the Leader of the Government in the Senate tell us why the revenue minister did not act more quickly on this important matter of privacy?

**Hon. Sharon Carstairs (Leader of the Government):** It is my understanding, honourable senator, that the department acted quickly when they became aware of the sensitive nature of the information in those computers.

## IMMIGRATION AND CITIZENSHIP

### NATIONAL BIOMETRIC IDENTIFICATION CARD— SECURITY OF INFORMATION

**Hon. Donald H. Oliver:** Honourable senators, this is the latest example of the federal government mishandling personal information of Canadians. In May, the personal information of about 200 Canadians was stolen by a Canada Customs and Revenue Agency employee and was sold to another party — most likely organized crime. Last month, the Canada Customs and Revenue Agency in Quebec sent the tax information of 49 Canadians to the wrong address. These incidents should, once again, raise serious questions about the proposed national identity card. The federal government cannot adequately protect the information it now holds, let alone a sensitive data bank that would be of particular interest to criminals.

Could the Leader of the Government in the Senate tell us how a data bank related to a national identity card would be better protected than the information currently in the hands of government?

**Hon. Sharon Carstairs (Leader of the Government):** As the honourable senator is aware, absolutely no decision has been made in respect of a national identity card. The way in which government could guarantee security and privacy information of Canadians must be carefully considered before such an initiative could be further processed.

## FOREIGN AFFAIRS

### IRAQ—RECONSTRUCTION ASSISTANCE

**Hon. Douglas Roche:** My question is to the Leader of the Government in the Senate. Could the government leader clarify Canada's position concerning the Iraq reconstruction conference, which will be held in Madrid later this week? Today, it was announced that a new agency, which will be run by the World Bank and the United Nations, would determine how to spend billions of dollars in reconstruction assistance for Iraq. This change effectively establishes some of the international control over Iraq that the U.S. has previously opposed.

Doubtless, the unanimity of the Security Council last week in adopting the latest Iraq resolution has strengthened, somewhat, the role of the UN. Where is Canada's money for Iraq currently being directed? What channels were used for the first \$100 million? Where will the forthcoming \$200 million be directed? Can the government leader confirm that Canada's money for Iraq will not go to the occupation authorities but will go directly to Iraq reconstruction?

**Hon. Sharon Carstairs (Leader of the Government):** I can assure the honourable senator that the money is to be used for Iraq's reconstruction. In respect of the precise vehicle for that

expenditure, I shall express the honourable senator's concern to my cabinet colleagues and obtain that information. I assume it is the honourable senator's representation that he would like to see the money go through a specific donor group comprising the World Bank and the United Nations.

**Senator Roche:** I thank the honourable leader for that. Where will Canada's \$300 million for Iraq come from? Will it come from CIDA's budget? United Nations Secretary-General Kofi Annan today called for bold action by developed countries to end world poverty. He said that as many as 24,000 people in developing countries, many of them children, die every day from hunger and extreme poverty. There is no time to lose, he said, if we are to reach the millennium development goals.

• (1440)

Can the minister assure the Senate that Canada's Official Development Assistance, still far below the 0.7 per cent UN target, will not suffer as a result of our new contributions to Iraq, which is certainly not a developing country?

**Senator Carstairs:** My honourable friend is quite right; Iraq is not a developing country in the normal sense of the word, but it is a war-ravaged country at the present moment.

The senator's question is very specific. I would suggest to him that since the National Finance Committee is meeting this week to study the Estimates, he might want to take that question directly to them. They may be able to provide an exact answer of where those dollars are coming from and from what line of the budget.

## BUSINESS DEVELOPMENT BANK

### UPCOMING AUDITOR GENERAL'S REPORT— DISBURSEMENT OF SPONSORSHIP FUNDS

**Hon. Marjory LeBreton:** Honourable senators, my question is for the Leader of the Government in the Senate. Weekend newspaper reports state that the Auditor General's report on government sponsorships and advertising is causing concern within the bureaucracy for those people who are normally trying to prepare a departmental response to the issues raised in the report. *The Globe and Mail* states that Crown corporations, including the Business Development Bank, were big players in sponsorship programs. It reports a source saying that Crown corporations were used to "launder federal funds."

Can the Leader of the Government tell us if the government has identified the individuals responsible for the so-called laundering of federal funds, and was Mr. Jean Carle of the Business Development Bank involved in any way with the disbursement of sponsorship funds on behalf of the Business Development Bank?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I will not comment on an Auditor General's report that has yet to be tabled.



## NATIONAL DEFENCE

UPCOMING AUDITOR GENERAL'S REPORT—  
REPLACEMENT OF SEA KING HELICOPTERS

**Hon. Marjory LeBreton:** The Auditor General's report apparently will be critical of the purchase of two Challenger jets last year to replace the executive jets used by the Prime Minister and cabinet. We know that the jets that were in service at the time had a 99.1 per cent reliability rate, according to the Department of National Defence. Honourable senators will know from an answer to an Order Paper question tabled in the Senate last year that DND submitted the requisition for the two Challenger jets on March 28, 2002, signed the contract that very day and, indeed, took title to the jets on that very day. Honourable senators will also know that the request for proposals for the replacement for the Sea Kings is still not out.

Can the Leader of the Government tell us why a requisition, a contract and a title transfer can occur in one day for jets for the cabinet, while Canada's military is still waiting for replacements for the Sea Kings 10 years after the Prime Minister cancelled the EH-101 contract?

**Hon. Sharon Carstairs (Leader of the Government):** The honourable senator again asks me to comment on a report that has not been tabled and will not be tabled for over a month from now. I will not comment on speculative papers and decisions about what the Auditor General may say when she tables her report, presumably around November 25.

**Senator LeBreton:** Is the reason we have all these Monday and Friday sittings the fact that the government does not want to be sitting at the end of November when the Auditor General's report is expected to come out?

**Senator Carstairs:** The government will have to sit, otherwise the Auditor General cannot table her report.

## BUSINESS OF THE SENATE

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, the minister suggested that the report will be tabled on November 25. Can she tell us, yes or no, that it will be tabled on November 25? Will the House of Commons be sitting then?

Through these questions, we are attempting to find out how we can organize our work. The calendar that has been approved indicates that we can be here until Christmas Eve if need be. If the government has other intentions, through whatever means, it should have the courtesy to tell both its members and the opposition that it wants certain legislation passed by a certain date and that this is the way it intends to operate. Do not keep us in this false suspense. Tell us what the intentions are.

**Hon. Sharon Carstairs (Leader of the Government):** When I am informed of the Prime Minister's intention and am allowed to share it, I will certainly share it with my honourable friend.

**Senator Lynch-Staunton:** On that basis, our intentions are to respect the calendar agreed to on both sides. Hopefully both sides will also respect the calendar and we will not be pressed to move things fast to accommodate certain political intentions of one individual in particular.

[Translation]

## FOREIGN AFFAIRS

UNITED STATES—CANADIAN CITIZEN DEPORTED TO  
SYRIA—POSSIBILITY OF PUBLIC INQUIRY

**Hon. Pierre Claude Nolin:** Honourable senators, about 10 days ago, you answered my questions about Mr. Arar. Your answer was substantially the same for each question: you did not wish to comment on internal operations of the Canadian security service or the internal operations of the Royal Canadian Mounted Police.

Since then, Mr. Arar has asked the government for a public inquiry into the activities of the Department of Foreign Affairs, CSIS and the RCMP.

Is it your government's intention to respond to Mr. Arar's request?

[English]

**Hon. Sharon Carstairs (Leader of the Government):** Mr. Arar has not, to my knowledge, taken any steps. He has indicated that he wants to clear his name. If his name can be cleared, then clearly all of us would like to see that happen on his behalf.

[Translation]

**Senator Nolin:** Am I to understand that if Mr. Arar were to make his request personally, your government would be open to setting up such a public inquiry?

[English]

**Senator Carstairs:** No, it is not the intention of the government to conduct a public inquiry.

**Hon. Marcel Prud'homme:** I take it for granted that if Mr. Arar is in need of support from the Canadian government to sue the authorities in the United States who arrested him — after all, he was arrested in the United States, not in Canada — support would be given to him. What happened in the United States on his return from Tunisia? What happened in Jordan, where it took 12 days to transfer him? Anyone who has been in that region knows it could take three hours, but I will be liberal. A 10-hour drive is more than sufficient, but he was kept 12 days in Jordan and close to a year in Syria.

The government may not like to have an inquiry in Canada, but would it support a Canadian citizen in taking the necessary action in the three countries that I mentioned, starting with the United States?

**Senator Carstairs:** As the honourable senator knows, the Government of Canada has already protested to the United States about the fact that Mr. Arar was deported to Syria — and, according to the information that my friend seems to have, via Jordan — and has made it very clear to the United States we think that is entirely inappropriate on behalf of a Canadian citizen. A Canadian carrying a Canadian passport, if he is to be deported anywhere, should be deported to Canada.

I can assure the honourable senator that if Mr. Arar needs help in making his case with foreign countries, we will help him do that.

[Translation]

## DELAYED ANSWERS TO ORAL QUESTIONS

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I have the honour of laying upon the table three delayed answers to oral questions: one delayed answer to a question raised in the Senate on September 24, 2003, by Senator Andreychuk regarding compliance with sole source contractual regulations; one delayed answer to the question raised in the Senate on September 17, 2003, by Senator LeBreton regarding the services of Aline Dirks and Paul Cochrane; and one delayed answer to a question raised in the Senate on October 7, 2003, by Senator Lawson regarding employment insurance and the eligibility of flight attendants.

## CANADIAN INTERNATIONAL DEVELOPMENT AGENCY

### COMPLIANCE WITH SOLE SOURCE CONTRACTUAL REGULATIONS

*(Response to question raised by Hon. A. Raynell Andreychuk on September 24, 2003)*

CIDA has in place an effective monitoring process to ensure that it complies with government contracting regulations and delegated authorities. This process includes ongoing monitoring, audits and evaluations.

In order to ensure itself that compliance was being achieved, CIDA, as part of its continuous improvement process, has undertaken a follow-up audit to the Office of the Auditor General 1999 and 2000 Reports on sole source contracting to determine the status of the progress being made. In the spirit of openness and transparency, CIDA made the audit findings available to the public in December 2002.

CIDA's Internal Audit Report of December 2002 underlined that CIDA had made significant progress in addressing systemic issues raised by the Auditor General. For example, an agency-wide contract management training program for managers and contract officers began in October 2002 and is on-going. As part of the Agency's training program, audit findings are used to give concrete examples of the importance of doing a contract plan, when sole source contracting should be used and how to substantiate the use of sole source contracting, as well as how to document files to ensure their completeness.

CIDA will continue to regularly assess and report on the progress being made on sole source contracting and government contracting regulations.

## HEALTH

### RESIGNATION OF FORMER ASSISTANT DEPUTY MINISTER OVER ALLEGATIONS OF FRAUD AND BREACH OF TRUST

*(Response to question raised by Hon. Marjory LeBreton on September 17, 2003)*

In December 2002, PWGSC's Human Resources Branch entered into a contractual arrangement with CMS, to assist Consulting and Audit Canada (CAC) with its human resources requirements. CMS assigned Ms. Dirks. Her services were retained through a call-up on an existing standing offer with CMS. Total cost for Ms. Dirks' services for the period spanning December 2002 to June 2003 were \$74,385.00.

December 2002 - March 2003	\$ 49,153.12
April 2003 - June 2003	\$ 25,231.94
Total	\$ 74,385.06

When Ms. Dirks took a two-week vacation (March 2003), CMS recommended the services of Mr. Paul Cochrane. CAC hired the services of Mr. Cochrane through a call-up against the CMS standing offer. Because of the accumulated workload in the HR sector, it was later decided to retain Mr. Cochrane to work on the preparation of job descriptions and on the Service Level Agreement between CAC and the Human Resources Branch. Total cost for Mr. Cochrane's services were \$23,834.26.

March 2003-June 2003 \$23,834.2

## HUMAN RESOURCES DEVELOPMENT

### EMPLOYMENT INSURANCE— ELIGIBILITY OF FLIGHT ATTENDANTS

*(Response to question raised by Hon. Edward M. Lawson on October 7, 2003)*

As of April 1, 2003, there was a change to the interpretation of the insurable hours of flight attendants. This, coupled with recent events within the Airline Industry, has had an impact on flight attendants. However, you may rest assured that flight attendants, like all Canadians working in insurable employment, do indeed have a legal entitlement to employment insurance and are in fact receiving those benefits to which they are entitled.

Here is an explanation of the situation. Under the EI Regulations (Section 11(1)) when a full-time employee's hours of work are restricted to less than 35 hours per week because of a federal or provincial statute, they are deemed to be insured for 35 hours per week.



As a result of an insurability ruling requested by an employee of Royal Aviation, the Canada Customs and Revenue Agency (CCRA) determined, with Transport Canada, that only the Flight Crew have restrictions, and contrary to our understanding and that of CCRA, only the Pilot and Navigators are considered to be Flight Crew.

There is no federal or provincial statute covering flight attendants with respect to the total hours they are permitted to fly. Therefore they can only be insured for the actual hours worked and paid.

Until such a federal statute is put in place by Transport Canada, HRDC has no option but to consider the flight attendants' actual hours worked and paid, as is done with most Canadian workers.

In March 2003, the airline industry was advised that any Record of Employment completed on, or after April 1, 2003 would be considered under the normal contract of service provisions; that is, coverage only for those hours that are worked and paid by the employer.

In the midst of these changes, Air Canada announced massive lay-offs. HRDC recognized that the necessary modifications to Air Canada's Record of Employment (ROE) system would impact on their ability to issue Records of Employment promptly. Therefore, in concert with Air Canada's payroll department, interim procedures were put into place. Air Canada used their current ROE system showing 35 insured hours but the number of hours was manually reduced until final ROEs with the correct number of insured hours could be issued. This temporary measure allowed the flight attendants' claims to be put into pay quickly while preventing overpayments of benefits.

At the same time and at the request of Air Canada, CCRA reviewed the flight attendants' collective agreement with Air Canada and issued a 'non-binding' opinion with regard to the number of insurable hours to be considered. The total number of insurable hours now includes duty time on the ground, in addition to flight time, since these hours are remunerated. This opinion was used by Air Canada to make the appropriate modifications to their ROE system.

Air Canada issued the amended/final ROEs to their flight attendants at the end of September 2003 with insured hours based on the flight attendants actual hours of work and remuneration. To date, the majority of these EI claims have been recalculated.

• (1450)

## ORDERS OF THE DAY

### BUSINESS OF THE SENATE

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, on the Order Paper, under Motions, I would like to call Item No. 1, move on to Item No. 2, under Bills, and then continue according to the order set out in the Order Paper.

### SPECIFIC CLAIMS RESOLUTION BILL

#### MOTION FOR TIME ALLOCATION ADOPTED

**Hon. Fernand Robichaud (Deputy Leader of the Government),** pursuant to notice given on October 9, 2003, moved:

That, pursuant to rule 39, not more than a further six hours of debate be allocated for the consideration for third reading of Bill C-6, An Act to establish the Canadian Centre for the Independent Resolution of First Nations Specific Claims to provide for the filing, negotiation and resolution of specific claims and to make related amendments to other Acts;

That when debate comes to an end or when the time provided for the debate has expired, the Speaker shall interrupt, if required, any proceedings then before the Senate and put forthwith and successively every question necessary to dispose of the third reading stage of the said Bill; and

That any recorded vote or votes on the said question shall be taken in accordance with rule 39(4).

He said: Honourable senators, the bill that is currently subject to this time allocation motion has been before us since March 19, 2003. Second reading commenced on March 25, 2003 and over five sitting days, six senators spoke during the debate.

Bill C-6 was then referred to the Standing Senate Committee on Aboriginal Affairs on April 2, 2003. The committee studied the bill for 20 hours and a half and heard 47 witnesses. The committee tabled its report on June 12, 2003, with five amendments to the bill.

That is when the Honourable Senator Chalifoux moved to adopt the report, which was adopted on June 19, 2003.

Debate at third reading commenced and continued into September. On September 25, 2003, with leave of the Senate, Bill C-6 was sent back to the Standing Senate Committee on Aboriginal Affairs for further study. The committee tabled its report on October 7, 2003. During that time, the committee had heard from seven witnesses.

The debate then continued on third reading; out of ten sitting days, seven days were given over to this bill. To date, honourable senators, 26 senators have taken part in the debate on this bill. Today is the tenth day of debate on third reading.

Two weeks ago, I gave notice of my intention to propose the motion we now have before us, that is allocation of six more hours on third reading of this bill and all related motions.

Honourable senators, I believe we have ensured that senators wishing to express their views have been able to do so, because Bill C-6 was studied in depth in committee, where amendments were moved, and these were then adopted in this chamber. The bill was also returned to the committee, and now we have it back again.

I believe, therefore, that it is high time the Senate finished third reading debate so that the bill can get back to the House of Commons. As I have already said, this is an amended bill, so it must go back to the other place for consideration.

I feel honourable senators have had ample time to speak. With the adoption of this motion, which I encourage honourable senators to support, there will be six more hours of debate.

[English]

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I would like to ask the Deputy Leader of the Government whether he agrees that by imposing time allocation, he in effect confirms that the letter written by the newly elected National Chief of the Assembly of First Nations strongly condemning this bill should be dismissed completely and that the views of the main spokesmen for Aboriginals on this particular bill, who are recognized as such by every governments, are not even worth considering?

I find it reprehensible that once again a bill with no deadline imposed on it is being subjected to time allocation. Yes, it has been before Parliament for some time, but what controversial bill does not take time to go through the process? The bill, fortunately, has some amendments that will improve it, but it also lacks some key amendments. Parliament, which as far as we know is here for another two months and could be recalled in January, is being told that suddenly there is an immediate need to get this bill through.

The second question is, why the rush? However, the main question is, how can the honourable senator be so dismissive of soundly-based, strong objections from the Chief of the Assembly of First Nations?

[Translation]

**Senator Robichaud:** Honourable senators, I do not think the intent of the motion was to say that we would ignore the people who have expressed their opinions. On the contrary, all interested parties had a chance to make their points, both in committee and here in this chamber.

[Senator Robichaud]

Many senators from both sides have spoken on this question, with great passion, whether for or against the bill. We have come to the point where a decision must be made. The debate is not cut off now, because there will be extra time to debate this bill. I am certain that senators who wish to use this allotted time will do so.

[English]

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Does the honourable senator see a distinction between allocation of time because of calendar and allocation of time because of sufficiency of debate?

**Senator Robichaud:** Honourable senators, an allocation of time is an allocation of time. It means that so much time will be given on the question before us.

• (1500)

It is my belief, and the belief on this side, that ample time has been given for the study of this bill. People have had the chance to speak. The bill has been before us for many days, and no one has expressed any opinion on it. We have to come to some decision as to whether we want to pass this bill at third reading. We are here to study bills and to come to decisions. This chamber must come to a decision and then send this bill, as amended, to the House of Commons for further consideration.

**Senator Kinsella:** Would the honourable senator not agree that, if we have eight weeks left before the end of this fall sitting and if there is a question as to the sufficiency of the time for debating, there is ample time for the government to reach its objective and, therefore, that it would be quite inappropriate to bring in time allocation to try to manage or to limit the time? We have eight weeks, or is there a hidden agenda? Is it that we do not have eight weeks, but rather that we will rise on November 7 and therefore we only have three weeks? Will the government come clean on this point?

**Senator Lynch-Staunton:** Hear, hear!

[Translation]

**Senator Robichaud:** Honourable senators, this is not the first time we have heard the honourable senators opposite speculating that we will not be here after a certain date. We are going to stand by the calendar. I sincerely believe that we have had enough time to express our opinions and propose amendments, in particular during the two separate periods when the committee considered the bill. The bill is now back before the Senate. We must come to a decision at some point. I believe the time has come, no matter what is going to happen in the future.

[English]

**The Hon. the Speaker:** Honourable senators, I regret to advise that Senator Robichaud's 10 minutes have expired.



**Senator Nolin:** It is 30 minutes.

**The Hon. the Speaker:** The next speaker would be Senator Nolin.

**Senator Kinsella:** It is 30 minutes for the leader.

**Senator Nolin:** Read your rules!

**Hon. Anne C. Cools:** Honourable senators, obviously senators have questions for the leadership. I am sure that if the deputy leader were to ask for an extension of time, we would happily give it.

[Translation]

**Hon. Pierre Claude Nolin:** Is it possible to seek agreement to extend the debate?

**Senator Robichaud:** Honourable senators, I do not intend to seek agreement to continue; I would prefer to listen to what the other senators have to say about this motion.

[English]

**Senator Lynch-Staunton:** But we want to ask you why. Shame!

**Senator Kinsella:** Perhaps His Honour would help bring clarity to this matter. My understanding of the rules is that each of the leaders has 30 minutes, rule 40(2)(b).

**The Hon. the Speaker:** Honourable Senator Kinsella, you are correct. We are operating under a rule that is not the norm in terms of time given for debate. We are operating under rule 40. I will read rule 40(2)(b), which covers this question, I hope:

(b) the Leader of the Government in the Senate and the Leader of the Opposition may each speak for no longer than thirty minutes, and each leader of a recognized third party in the Senate may speak for no longer than fifteen minutes;

(c) except as provided in sub-paragraph (b) above, no Senator may speak for longer than ten minutes...

There are other places in our rules where the Leader of the Government and the Leader of the Opposition are referred to and where the titles of deputies are added, but they are not added in this case. Accordingly, I would interpret this as being applicable only to the office-holders referred to specifically in the subsection. Accordingly, Senator Robichaud had only 10 minutes.

**Senator Lynch-Staunton:** Too clever by half! Very smart.

**Senator Cools:** Your Honour, this opens up another question, because obviously the subject matter of closure on this particular bill is very important. It seems to me, then, that perhaps the chamber could have been asked by the leaders which one of the two it wished to speak to the particular motion. It seems to me that senators have very many important questions and that the government has a duty to answer those questions.

If Senator Robichaud does not want to continue to answer these questions, perhaps, then, Senator Carstairs would be happy to take over in his stead, in which case she would be allowed another 15 minutes.

It seems to me, honourable senators, that this is an important matter and that there should be an exchange between the government and between the government leadership and senators here.

**Senator Carstairs:** Question!

[Translation]

**Senator Nolin:** Honourable senators, rather than asking the question, I am going to give a short speech.

**Senator Robichaud:** A short sermon?

**Senator Nolin:** The honourable senator has just informed us that, very magnanimously, he was allowing all those who wanted to express themselves to do so, be they honourable senators or members of the public. He also stated that the committee held hearings to hear from witnesses twice. Does the honourable senator, in advising the Senate of this great magnanimity, realize that, when the committee met for its second consideration of the bill, the meetings were abruptly halted and not all the witnesses were heard?

I find it strange that the government — to use the words of the Leader of the Opposition — would dismiss a letter from the new leader of a Canadian organization representing the First Nations. He is hiding behind the fact that those wishing to speak had the opportunity to do so, when he knows — if he did not know, then he should have known — that not all the witnesses wanting to speak were able to do so the second time the committee considered the bill.

Honourable senators, we are being asked to vote on a time allocation motion to limit debate at third reading, when not all the witnesses were able to appear, including the individual who signed the famous letter, the substance of which this chamber has failed to respect.

Honourable senators, the answer is ours to give, will we bend to the will of the government or will we recognize the rights of those Canadians to be heard, as they deserve?

[English]

**Senator Cools:** Your Honour, I have a few problems here. Maybe we have a question of order before us, or maybe we do not. It seems to me that the chamber and members in the chamber have a right to expect answers from the government. The government has moved a motion of closure. It seems to me that under all the rules of our system, and under all the principles, the government should give adequate explanation and adequate clarification to members.

Your Honour, maybe we could proceed under point of order. My understanding is that governments cannot simply decline to give reasons for their actions and that the constitutional purpose of any chamber of parliament is to ensure that the government answers for all these questions of public policy and for every single question or every decision of state.

• (1510)

I have never seen anything quite like this where the government relies on the Speaker of the Senate to read a rule saying, "Well, it seems to me that the government leader does not have to speak on this important matter and that the deputy leader has spoken and, furthermore, only for 10 minutes."

There is something very wrong here, Your Honour. I do not know to whom to talk. Perhaps that is the whole idea — perhaps we are supposed to talk just to ourselves. If that is the way it is supposed to be, I am sure there are many here who could oblige us.

However, since I am not yet in the habit of talking to myself, this chamber, if it is an honourable chamber, should find a more noble way to proceed. This is an important matter. I, for one, am not content or happy with just being sloughed off by the government in this way.

When the government moves a motion of closure, the government has a duty to attempt at least to persuade members of the Senate to vote for it. As a Liberal member sitting on the benches of those who support the government, I would expect that my own side would at least try to persuade me, to use reason, intelligence and principles to guide the debate rather than a sleight of hand saying, "We just want this closure because we feel like it." That is not how Parliament proceeds.

If Your Honour wishes, perhaps I could raise this as a point of order.

**The Hon. the Speaker:** Honourable senators, that is probably the basis on which Senator Cools rose. I gather she was not speaking to the motion. As well, because Senator Robichaud has not allowed an extension of time, the honourable senator's intervention could not be a question directed to him.

Do other senators wish to speak to Senator Cools' point of order?

**Senator Cools:** Since we cannot speak to the government here, from what I can see, then we have to speak to Your Honour. Since it is your judgment which seems to be carrying the day, perhaps your judgment should carry the day again.

His Honour must admit that it is very unusual for a government to decline to answer on such important matters. If the government's reasons are sound, then they should put those reasons before us. We would be happy to make a judgment.

[ Senator Cools ]

We seem to forget that this chamber is being asked to make a judgment on the question of closure itself. The government is asking members of this house to vote with the government, thereby stating that closure is desirable and desired and that it is a proper way to proceed. It seems to me that the government leaders have a duty to get to their feet and to give us sound reasons as to why they are going down this road.

We do not live in the Dark Ages. This is not a medieval house where the leader stands and says, "We want it that way, and that is enough." The government leaders have a duty to get to their feet, to answer us and to help us understand why this particular motion has been brought forward when there is no urgency in sight. In my mind, there seems to be no sound reason to move this motion other than as an act of absolutism.

**Senator Kinsella:** Hear, hear!

**The Hon. the Speaker:** As presiding officer, I have been asked by Senator Cools whether there is a method by which a senator, presumably the leader or the deputy leader, can be compelled to take the floor. I am aware of no rule, provision, custom or practice to allow such a step to be taken, even by the Senate acting under motion.

[Translation]

**Hon. Aurélien Gill:** Honourable senators, 20 hours of debate in this House would be quite the feat. Yet, it pales in comparison to the patience of members of the First Nations. I know that some senators are prepared to discuss it further. I also know that the system requires us to move to a vote. However, is it not one of our objectives in this chamber to defend the rights of minorities? Is holding non-partisan debates not another of our objectives?

For once, there is consensus among First Nations. The members of the committee heard most of the witnesses say they did not want this bill and, at worst, we should make major changes to it. For once! What are we waiting for? Life will go on. Tomorrow we will still be alive and still be senators. Why insist on adhering to the system when it does not suit our needs? Generally speaking, each time the courts seriously study the Aboriginal issue they always reach fair judgments that are favourable to First Nations, because the judges take the time to assess the situation. I understand that here in the Senate we do not have more experience than others. We may have more rights than others, but here, we resolve things more quickly.

I have always had a great deal of respect for this chamber and its members, but please, for once, let us put our foot down and make a decision to take our lead from the First Nations. Four hundred years of history also represent a feat for the First Nations. Should we not listen to them for once, in the off chance they may be right? What if problems suddenly stopped multiplying? What if the suicide rates dropped all of a sudden? Let us put our trust in the process. It is not and never will be too late.



Sometimes, I get the feeling that we are trying to blame how long this debate is taking on them. I hope this tactic will fail. That has been our approach so far. Discussions about the status of Aboriginal people are always too lengthy. Honourable senators, I hope this time will be different.

[English]

**Hon. Charlie Watt:** Honourable senators, I, too, would also like to say a few words on the motion for closure.

Honourable senators, I do not understand why there is an urgent need at this point to end the debate. I believe all of us in this chamber are fair-minded people. I am not here to judge honourable senators on their individual motives for taking this measure. However, at times, we need to address certain matters that are sensitive to the people this affects.

• (1520)

We heard witnesses from across the country state very strongly why Bill C-6 is not workable. I made a speech in this regard quite some time ago. I sympathize with the leadership and the fact that they have been dealing with this bill for some time, but I think it deserves to be dealt with in this fashion.

In addition to being fair-minded people, we are all sincere. I believe that we are all doing our jobs with sincerity. One of our responsibilities in this occupation is to represent the people who are not always fairly and properly represented, who are under-represented, as are Aboriginal people.

Many honourable senators have dealt with Aboriginal people over the years. I have dealt with my own people over the years. I know the conditions in these communities, and I am sure that many of you understand those conditions.

This legislation will give one answer now and another answer tomorrow, but we do not know when the first answer will no longer be acceptable. I hope honourable senators hear me clearly on this issue. This bill deals with the issue on a piecemeal basis. It says that this is good enough for now and that we will think tomorrow about what else is needed. That is no longer acceptable.

Honourable senators, it is very important that we do our job properly. That is difficult today, especially in light of the vacuum of leadership in this country.

I would like to make a recommendation on this issue. I know that we have talked about it for quite awhile, but I think that we need to talk about it some more. This bill will not disappear completely, even if the current government does not continue to govern the country. We can pick it up again under a new government, and hopefully we can improve it. I still maintain that the four amendments that were put forward are nothing more than an administrative arrangement.

This bill has legal and constitutional implications that have impact on Aboriginal people, as we have continually said. I did not attend the first hearing of the Aboriginal Peoples Committee;

I went to the second hearing and to the last hearing to listen to what people had to say. At the final hearing, there was a motion to send the bill back to the Senate without any amendments. Our intention — and I include myself because I am part of the establishment — was that nothing would happen, regardless of what we heard from the witnesses.

One of the witnesses was Peter Hudson, with whom I have dealt in the past. He is a well-qualified litigator, negotiator and councillor. I do not think he was heard. He indicated what is wrong with this bill. He alluded to the fact that there is a legal problem with it. He even alluded to the fact that there are constitutional complications attached to it. However, we did not hear him; we did not say that we would attempt to correct the problems. Rather, it was decided to send the bill back to the Senate for third reading and passage so that the matter would be done with. That is not right. In my opinion, we are not handling this matter in the right way at all.

I would like to suspend this debate until the arrival of a new government and a new approach to the whole question of regional matters. I hope that I have been heard clearly.

**Hon. Thelma J. Chalifoux:** Honourable senators, I had not intended to speak on this motion today, but I believe that in the interests of the committee and the Senate, and having regard to our rules, I should speak.

This issue first arose in 1946 when the government of the day, with the participation of the Senate, raised the issue that First Nations needed a separate institution to deal with specific claims. The issue was addressed in the 1960s, the 1980s and the 1990s. Therefore, it is incorrect to say that the issue has not been dealt with for very long. It has been dealt with for a very long time.

We have a choice in the Senate. Our committee did proceed with an open mind, as it must. I cautioned committee members, as I always do, to ensure that they listened to all sides and not only the government side, and we did that.

This past weekend, I reviewed several of the presentations made to the committee. The Blackfoot Confederacy has been a government of First Nations for hundreds and hundreds of years. It is a definite government. The Assembly of First Nations wanted to have total control over appointments, but Chief Shade said no. He said that all nations should have participation in the appointments.

The Blackfoot Confederacy is a government and we must listen to that government. They were not happy with the bill, but they said that with a few amendments they could live with it because it is a work in progress.

I reviewed the presentation from Tsuu T'ina Nation of southern Alberta. Ron Maurice, their legal counsel, said that he was not happy with the bill, but that the Tsuu T'ina could live with it as a start. They wanted something similar to a human rights commission, but he said that that could be part of the work in progress.

Honourable senators, we have a choice to make today. Either we move forward one step or we stay with the status quo, which would mean that it would take another 30 or 40 years to deal with the smaller claims.

This is an opt-in bill. First Nations do not have to participate in this legislation if they do not want to. They can choose the commission or this bill and the institution.

Honourable senators, I know that this is not a perfect bill. I know that there are many concerns. However, there have been amendments as well as observations. Rather than having a review in three or five years, we can start the review process now so that in three years the lobby groups and the Aboriginal governments can begin a good dialogue. This bill represents a beginning; it is a framework — a framework of an independent institution.

Last night, I spoke to Joe Cardinal, a very wise elder from Saddle Lake, about this bill. He said, "Thelma, I think it is time. We have to begin to put in place institutions in preparation for self-government."

• (1530)

I asked Mr. Cardinal about self-government and he said that the confederacy is a government and the government should be dealt with, but that is a matter for the Blackfoots. The Crees are also a work in progress. By the time this institution is done, the Crees will also have a form of government.

I totally support this motion. It has been a long time from 1946 to 2004 and it is time to move forward.

**Senator Cools:** Will the honourable senator take questions?

**Senator Chalifoux:** No.

**Senator Cools:** I shall ask the honourable senator a question as chairman of the committee, then.

**The Hon. the Speaker:** I want to be as liberal as I can in these matters, honourable senators. The rule to which the honourable senator is alluding allows that questions may be put to committee chairs during Question Period. We are debating the time allocation motion at present.

**Senator Cools:** Your Honour, we are crystal clear on the motion before us, there is absolutely no doubt. However, my understanding is that, whereas some senators have the luxury of being able to decline to answer questions, chairmen of committees have no such luxury. I rose and asked the honourable senator in her personal capacity as an ordinary senator if she would take a question. Then I rose again and said that I would now put the question to her as the chairman of the committee.

My understanding is that once the preferment of Her Majesty has been conferred upon any individual member of Parliament, he or she is no longer open to making personal choices in respect of answering questions.

[ Senator Chalifoux ]

My understanding is that the honourable senator who just spoke, Senator Chalifoux, was speaking on a pressing matter in support of the government's initiative on closure and has an obligation to take a question in respect of the committee study. That is my understanding.

**The Hon. the Speaker:** I may be repeating myself, honourable senators. It is true that we permit questions to committee chairs as well as to ministers during Question Period. However, we are not in Question Period; rather, as we all know, we are debating the closure or the time allocation motion moved by Senator Robichaud, seconded by Senator Rompkey. This is not a situation where we are in Question Period or anything like Question Period. Accordingly, there is no way a senator can be compelled to take a question or even to speak.

Accordingly, the debate resumes.

**Senator Cools:** Honourable senators, I should like to clarify a misunderstanding. I do not believe that I or anyone else in this chamber was labouring under the illusion that we were in Question Period. I do not believe that any enunciation or reminder needs to be given to honourable senators that they are not in Question Period.

As a matter of fact, the point that senator after senator is trying to make is that we are in a debate on a motion about closure. However we try, we cannot seem to get a debate going, because the movers and the supporters of the motion will not answer. It seems that they have found some level of support in His Honour.

**Senator Robichaud:** Order!

**Senator Cools:** That is quite in order. In the Senate chamber, we can speak to His Honour. This is not the House of Commons; this is the Senate.

Honourable senators, I should like to cite for the sake of the record and for posterity a couple of concerns. The first concern I should like to record is my understanding of the phenomenon of closure and what closure is intended to do.

When the notion of closure and the guillotine and those sets of procedures were introduced, it was my understanding that they were introduced as mechanisms to overcome severe obstruction and obstacles that had been placed in the path of a measure, in this instance, a bill.

Honourable senators, in the interest of redeeming the characters and the honours of two honourable senators, particularly Senator Gill and Senator Watt, I should like to say that, as a senator sitting here, I have seen no sign whatsoever of obstruction, of delay or filibuster. It would take a huge leap of the imagination to treat what has been happening here as an obstruction.

Honourable senators, I was a member of the Senate during the GST debate. I understand and know what a filibuster is. I know the amount of talent and industry it takes to conduct a filibuster. I know that His Honour, Senator Hays, was a member of this chamber during the GST debate and probably recalls the events as vividly as I do.



Honourable senators, the point must be made again that this particular motion that has been moved by the government is unfounded, unfair and unjust. It is also unnecessary. According to the leader's own answers to questions some time ago, there is no urgency whatsoever because the Parliament of Canada may be sitting for many weeks to come. There is obviously no problem with time.

There are two points: First, there is no urgency — these parliamentary measures are supposed to be used because of an urgency; second, there is no obstruction. Honourable senators, those two discrete elements of a closure motion are very much absent.

In respect of redeeming the honour of two of our splendid Aboriginal senators, Senator Gill and Senator Watt, I should like to say that, unlike the government in this chamber, I have heard from these two gentlemen most sincere pleas to this chamber to listen to the concerns of Aboriginals on this subject.

I do not think I am speaking out of turn at all. When Senator Gill spoke about when he was a chief — I did not know that he had been a chief; I do not think I am that well-informed of native and Aboriginal questions — I must say that I was deeply touched.

Some days ago, when Senator Sibbeston, even though there is a disagreement on this bill, was speaking about the real needs of Aboriginal people, again I was deeply touched and concerned. For almost the first time in the history of Canada, we now have represented in this chamber real voices from real members of these communities. Honourable senators, it behooves us to give those senators a good hearing and to listen with care, not just to listen in the abstract sense of not interrupting, but to listen to the extent that we give their concerns voice.

• (1540)

Honourable senators, I do not see life through the eyes of a native person, but I do believe that the native sense of alienation and the native sense of not being heard are indeed deep and profound. These senators have been doing a splendid job of trying to get a hearing. It is unfortunate that there are so many deaf ears.

Some days ago, honourable senators, a letter to Senator Chalifoux from Phil Fontaine, National Chief of the Assembly of First Nations, was appended to the *Debates of the Senate*. I would like to put some of that letter on the record today. The letter includes the question that I wanted to put to Senator Chalifoux.

In one part of his letter, National Chief Fontaine stated:

The Senate amendments proposed so far are inadequate. The AFN has never been given an opportunity to comment on them before a Senate committee.

Honourable senators, as I said before, I have not been involved deeply or at all in the substantive issues of this particular bill. When one hears a man of the stature of National Chief Fontaine — and he does have stature; his manner is soft-spoken — one must have great respect for him.

National Chief Fontaine rejects the same amendments that Senator Robichaud has told us are so excellent; yet, Senator Robichaud says we must rush to judgment now on a closure motion so that the House of Commons can pronounce on those amendments.

There is something very wrong, honourable senators, because National Chief Phil Fontaine has also said that the AFN has never been given an opportunity to comment on those amendments before a Senate committee. When a chief of this stature speaks to us in this way, the committee should hear what he has to say. Perhaps it was an oversight or a misunderstanding, but I believe this honourable chamber should make sure that the AFN has an opportunity to place its views before us. Would it have been such a strenuous and difficult proposition for this chamber to go into committee of the whole to listen to the Assembly of First Nations?

It is absolutely staggering to me that the Aboriginal committee does not feel wrapped in shame that it has not given to the Assembly of First Nations an opportunity to comment. I just do not understand. All I can say is that I am not a member of that committee, but if I were, I would have had something to say about that.

I am also reminded that Senator Gill and Senator Watt attempted to fix some of these problems by moving motions to recommit the bill to another committee, the Standing Senate Committee on Legal and Constitutional Affairs, which then would have been able to have a fresh look at the bill. Perhaps it would have come to a different conclusion than did the Standing Senate Committee on Aboriginal Peoples. From what I know of the operations of the Legal and Constitutional Affairs Committee, I feel confident that it would have at least attempted to bring Mr. Fontaine before it to give him the kind of hearing he deserved.

Honourable senators, I want you to know that we sit here again and again and feel compelled and driven by governments to pass bad bills or insufficient bills or inadequate bills. I say again and again that we must to act in a conscientious manner and in a conscientious manner. We are passing legislation in this instance, moving a motion that attacks the independence of Parliament. We are passing measures that affect thousands and millions of lives. I believe we should give these questions the time they deserve.

**The Hon. the Speaker:** Senator Cools, I regret to advise that the 10-minute speaking time has expired.

**Senator Cools:** I wonder if I could have a few moments to finish off my statement.

**The Hon. the Speaker:** Is leave granted?

**Some Hon. Senators:** No.

**Senator Cools:** I am only trying to quote Chief Fontaine.

**The Hon. the Speaker:** I am sorry, Senator Cools, but the response to the request for leave must be without a dissenting voice, and I heard several voices say no. Accordingly, your request for leave is not successful.

**Senator Cools:** I am sure National Chief Fontaine will read the record.

**The Hon. the Speaker:** Senator Chalifoux, you have already spoken.

**Senator Chalifoux:** Your Honour, I would like to respond to several things that honourable senators have mentioned.

**The Hon. the Speaker:** Honourable senators, The rule is clear, and that is that senators speak only once to a motion. Senator Chalifoux has already spoken.

**Senator Lynch-Staunton:** Honourable senators, I would like to do a little historical review of what we are about. Is it was in June 1991 that our rules were changed to allow a time allocation feature. Before that, until the GST debate, this chamber had its own internal rules, vaguely written, but each senator was respected and respected the chamber. After the GST debate, it was found necessary to put an end to the excessive use of the vague rules we had suffered through. New rules were written under the leadership of Senator Robertson — rules, by the way, which were not approved by our Liberal friends. Even during the study by the Rules Committee, Liberals boycotted the committee. Senator Olson did show up once and was told by his leadership, "You are not to show up in that room again."

That is how these rules came into force, and they have turned out to be very good rules. As a matter of fact, the few amendments made since have not changed the essence of them and that is —

**The Hon. the Speaker:** Sorry, Senator Lynch-Staunton, but a question has been asked as to what you are doing.

Senator Lynch-Staunton is speaking to the motion.

**Senator Kinsella:** He has 30 minutes.

**Senator Maheu:** He has already spoken.

**The Hon. the Speaker:** I think Senator Lynch-Staunton asked a question. I will ask the Table to clarify.

**Senator Lynch-Staunton:** If the attitude of the other side is that I cannot speak because it is in such a hurry to meet a November 7 deadline, I wish they would just say so and end this charade. I do not want to waste my time nor the Senate's time.

Honourable senators, why is Senator Maheu saying that I have already spoken when I have not, and why is His Honour being asked what I am talking about when I am speaking to the motion? What is this sudden urgency? We have eight more weeks here, or do we not?

**The Hon. the Speaker:** Senator Lynch-Staunton has the floor and has not already spoken. He has 30 minutes.

**Senator Lynch-Staunton:** I simply want to point out that the rules that were put in place were designed to bring some order to this place and to put an end to endless filibustering and to the excessive use of vaguely written rules to obstruct legislation — legislation which was never overturned once the obstructionists had the power to do so. I am talking about the GST, but let that be a debate for another day.

• (1550)

What concerns me, and what should concern all senators, is that there is no justification for this motion today — none whatsoever. What is the urgency? The only urgency I have heard stated is that this bill has certain amendments attached to it and, therefore, has to go back to the other place for proper debate. I agree with that. However, those amendments are not controversial. They have the full support of this chamber. They have the full support of the government in the other place. Therefore, any debate on them will be perfunctory. There will be objections, perhaps, but the majority on the other side has already decided that these amendments will be supported. Hence, whether they get the bill tomorrow or next week or even next month, the bill will go through without any changes to what we have before us by the time the Christmas adjournment comes.

What is the rush? There is not any, except to meet a yet-to-be-admitted deadline of November 7 to meet the objectives of one individual on whose behalf we will be receiving another bill asking us to accelerate the bringing into force of additional ridings — also to serve the interests of that one individual.

We are finding now that Parliament is not only the instrument of a party, but also becoming the instrument of the new leader of that party. Do we want to be a party to that? Will the Senate be the handmaiden or the caboose on the Paul Martin train? Well, not me, and I would think that most members here have more respect for the role of Parliament not to fall into that trap. That is the point I am trying to make.

Therefore, I say there is no rush. The amendments are supported by all members here, as far as I can tell. They do not go as far as certain members would like. The government will support them in the other place. We are here, until further notice, until just before Christmas — so, why? Senator Robichaud has not answered. What he has actually said is that he is fed up with the debate. You know, we had twenty hours —

**Senator Robichaud:** I did not say that.

**Senator Lynch-Staunton:** It has gone to committee twice —

**Senator Carstairs:** March 29, 1993, one speech before time allocation.

**Senator Lynch-Staunton:** So what? So what?

**Senator Kinsella:** And your point is?

**Senator Carstairs:** Twenty-six speeches.



**Senator Lynch-Staunton:** I will let Senator Carstairs answer me. Thank you.

Let me finish on this. When was the last time the Senate was called to sit at two o'clock on a Monday afternoon so early prior to the Christmas adjournment? Well, we looked it up. It was October 1980. As to why that was, I hope I will be able to tell you tomorrow. We are still doing our research. It is highly unusual and exceptional that we be called to sit on a Monday so long before the traditional adjournment for Christmas and New Year's.

In September 1988, on September 12, the Senate was called to sit at three o'clock. Well, there we were, two months from an election. One remembers the debate at the time, so that is understandable.

Therefore, why are we here on this Monday? Why could this debate not have waited until tomorrow? Why are our ranks not as plentiful as they should be? It is because we were not advised in good time. That is why Senator Kinsella asked the government leader to advise us ahead of time when she expects us to sit on Mondays and Fridays, so that we can make our plans accordingly. It is easier for some of us who live nearby, but Senator Carney, Senator Austin and others from the West Coast have to break up a weekend to be here on a Monday. Please let them know ahead of time, as well as Senator Sparrow, Senator Christensen and Senator Sibbeston and all the others who come from so far away. They have a right to know. Do not say, "We will let you know in our good time; it depends on how we feel." I urge the government leader to treat this place with a little more respect.

I do not know if that has much to do with the motion, Mr. Speaker, but I wanted to get it off my chest. I think I speak on behalf of quite a few people here. The main point for me is that we do not need this motion, and I urge all to vote against it. Let us not become parties to one individual's agenda.

**The Hon. the Speaker:** A question?

**Senator Cools:** Will the honourable senator take a question, or maybe he is reserving the rest of his time for later on?

**Senator Lynch-Staunton:** No, I am done, thank you. I will listen.

**Senator Cools:** Maybe someone on the opposition side will answer a question. I did not know it was so easy to duck questions.

I am looking at Chief Fontaine's letter that was appended to the *Debates of the Senate* of October 9, 2003. I had previously tried to put a question to the chairman of the committee, so I will try the Leader of the Opposition to see if I can get some insight or some understanding as to why.

In his letter, Chief Fontaine's says the following:

Serious legal and constitutional issues have been identified with Bill C-6. The Bill is not only unsound in policy terms, but incompatible with principles of natural justice...

Chief Fontaine continues further on:

With respect, these issues were not adequately recognized or addressed by the Senate Committee on Aboriginal Peoples. On some issues, very basic misunderstandings seem to remain. Basic fairness requires no less.

Chief Fontaine, in his letter, is expressing an opinion, which states that he does not believe that the Senate Committee on Aboriginal Peoples addresses particular and important issues.

So far, I cannot get to put a question to the chairman of the committee or to the Leader of the Government or to the Deputy Leader of the Government, so I figured that maybe, as opposition leader, the honourable senator might be able to help me in my distress.

**Senator Lynch-Staunton:** What I think is important is that the committee has had before it a letter from the official spokesman of the Assembly of First Nations, which has representations to make. Whether I would support that is beside the point. What is important is that the AFN has been, until now, accepted by the government as the official spokesman. Perhaps others here who are more familiar with operations than I am will deny that. That is the way I understand it.

There have been former chiefs who have riled this government or governments and other chiefs who have been more cooperative. That is not the point. They have all been recognized as spokesmen.

Let me read the letter. It was tabled, but tabling is not enough. Listen to the letter and listen to the official spokesman of the Assembly of First Nations, duly elected —

**Senator Watt:** National Chief.

**Senator Lynch-Staunton:** National Chief, thank you. It was addressed to the Standing Senate Committee on Aboriginal Peoples, dated October 2:

The AFN has been invited to comment on how the *Powley* decision might affect Bill C-6. However, a few preliminary remarks are in order. Before commenting on *Powley*, it is necessary to make clear the context concerning larger issues surrounding Bill C-6.

For several years, the AFN and federal officials participated in a Joint Task Force ("JTF") to consider the requirements of an effective, specific claims body. In an unprecedented spirit of partnership, the JTF produced a model of a sound and effective system.

• (1600)

If anyone wants to contradict what I am reading, please interrupt.

The exercise should have stood as a landmark in cooperative policy development.

Instead, the federal government rejected the model suggested by the JTF and terminated consultations. It produced a Bill that continues, rather than resolves, the problems of the past, including delay and conflict of interest on the part of the federal government.

The AFN has repeatedly called for a return to direct Canada-AFN discussions aimed at producing a genuinely just and effective Bill. So far, this has not happened.

It is not too late. Despite all that has happened, a federal government that wishes to return to constructive, mutually-respectful and results-oriented dialogue will find a willing partner in the AFN.

Serious legal and constitutional issues have been identified with Bill C-6. The Bill is not only unsound in policy terms, but incompatible with principles of natural justice, including the need for an adjudicative body to be genuinely independent. A fiduciary must not only avoid conflicts of interest, but address breaches of its obligations to First Nations with reasonable speed and without arbitrarily excluding whole categories of First Nation claimants — such as those who were unilaterally promised reserves they have never received. With respect, these issues were not adequately recognized or addressed by the Senate Committee on Aboriginal Peoples. On some issues, very basic misunderstandings seem to remain. Basic fairness requires no less.

Once again I invite colleagues, if some of these statements are exaggerated or even edge on excessiveness, to please interrupt. The letter goes on to say:

Over a year ago, the AFN openly tabled a detailed legal analysis of the Bill. The concerns expressed stand. They are supported by case law that is no less important than *Powley*. It would be unfortunate if First Nations find that going to the courts is the only path through which to find a forum that will respond constructively to these concerns. The Senate Committee on Legal and Constitutional Affairs ought to be given a full opportunity to now study the issues raised, and consider how they can be addressed constructively. If Justice has any technical responses, they ought to be documented and released for public scrutiny and comment.

The Senate amendments proposed so far are inadequate. The AFN has never been given an opportunity to comment on them before a Senate committee.

One amendment “allows” individual claimants to send in suggestions about the appointment of Commissioners, but the Minister retains the power to appoint.

No statutory role is given to the AFN, a national body that has the delegated authority from First Nations to coordinate suggestions and partner with the federal government in ensuring that only qualified and impartial persons are appointed.

The amendment that would increase a cap on individual claims by \$3 million (to \$10 million) is too small a step in the right direction. Most claims — on the basis of any independent and credible projections — would be denied access to the tribunal.

Another amendment addresses an extremely limited aspect of the conflict of interest issue. Federal control over appointments and reappointments remains. So does a privileged access of federal public servants (but not members of First Nations institutions) to positions on the new bodies.

Another amendment allows a claimant before the Commission to go to the Tribunal to apply for a subpoena. This route is an inadequate substitute for the right that is being stripped from claimants; to obtain a public inquiry from the Commission on a claim with a public report to follow. The minority will be able to proceed to the Tribunal; claims above the cap will have no effective means of pressuring a federal government that is unreasonably stalling or denying a claim.

The federal government still has a chance to meet with the AFN, restore the spirit of partnership, and work together to produce a specific claims Bill that will benefit all Canadians. Moving rapidly to resolve specific claims will promote economic and social development among First Nations and their surrounding communities. It will remove a longstanding obstacle to reconciliation, and help to shift the focus of the First Nations-federal relationships from redressing the past to building the future together. If the federal government instead pushes ahead unilaterally to impose a fundamentally unjust Bill, First Nations will have no choice but to consider and pursue with vigour their legal and political remedies.

The AFN has been asked with very short notice to comment on the *Powley* decision.

Let there be no doubt about some basic principles:

First, the AFN supports reasonable responses to the just claims of all Aboriginal peoples, including the Inuit and Metis.



Second, the AFN recognizes pluralism among First Nations and among the peoples named in s. 35 of the *Constitution Act, 1982*. Equality does not require, or even permit in some cases, an identical treatment of different groups. Their distinctive histories, rights, interests and political choices must be taken into account in appropriate ways.

Turning now to particulars, it is important to recognize that *Powley* is not the only relevant decision handed down by the Supreme Court of Canada that is relevant. In the *Blais* case, the Supreme Court of Canada ruled that Metis are not "Indians" for the purposes of the *Constitution Act, 1930*. It appears that the reasons of the court would surely also apply to the issue of whether Metis are Indians for the purpose of s. 91(24) *Constitution Act, 1867*. The Court has acknowledged, in other words, that First Nations and Metis have, for at least some important purposes, different constitutional histories and positions. In the *Lovelace* case, the Supreme Court of Canada had recognized that the distinctive legal and social position of First Nations means that a government can design programs in partnership with First Nations that extend to them only, and do not necessarily include the Metis. This is not in any way to deny that Metis are entitled aboriginal people; or that governments have (e.g. the *Manitoba Act*, the Alberta legislation the Metis settlements) crafted distinctive programs to address Metis rights.

In addressing specific claims, it is reasonable and appropriate for the federal government and the AFN to develop, in particular, and operate in collaboration, a system that addresses First Nations claims. For over a century, the *Indian Act* has operated to vest a larger and larger measure of control over Indian lands and assets in First Nations. It is from this statute that many specific claims arise. The *Indian Act*, as the Supreme Court of Canada observes in *Blais*, drew a clear distinction between Indians and Metis.

The AFN recognizes that Metis organizations have brought claims based on their own distinctive constitutional histories and rights. It would welcome the just and prompt resolution of those issues by provincial governments. Perhaps there may even be a role for the federal government to play.

However, given the long history of justice denied to First Nations in the context of specific claims, First Nations cannot be expected to wait while yet a new process of consultation unfolds. After earlier efforts over decades failed to produce consensus, bilateral discussions between the AFN and federal officials produced the JTF model, and it is long overdue that a just system based on that model be implemented.

One of the most problematic aspects of Bill C-6 is its attempt to eliminate the AFN from its role — fully recognized in, and by, the Joint Task Force — of

coordinating and effectively representing First Nations opinion on appointments and in the three-year review of the new system. Few organizations operate as democratically as the AFN. A National Chief needs a mandate from a full 60 per cent of Chiefs who represent the overwhelming majority of First Nations. No organization is better suited to consult with and speak for claimants and potential claimants. Its position on Bill C-6 is supported by regional and individual First Nations across Canada. There is no split between the "grass roots" and the leadership. First Nations across Canada will not accept any attempt by the federal government to exclude the AFN from full participation in the creation or operation of a truly just and effective system by using the rationale that Canada is home to other Aboriginal peoples besides First Nations. The federal government should be prepared to engage in separate policy processes with each of the AFN and, when and where appropriate, the proper representatives of the Metis.

The federal government continues to under fund the resolution of specific claims. The backlog grows. Debts that involve the honour of the Crown and lawful obligations remain unpaid. Communities continue to suffer. There must be an increased federal commitment to honouring its obligations. The AFN does not accept any potential federal model in which the claims of Metis are added to the claimants on the same or even shrinking allocation. Metis claims, not yet defined sufficient to rely on, should be addressed in their own right, on their merits, and federal and provincial governments must provide whatever additional funding is required out of their own resources — rather than further denying and depriving First Nations.

It might be noted, incidentally, that *Powley* dealt with a site-specific claim. The Metis claim in that particular case would not fall within the mandate of the specific claims body under either the JTF model or Bill C-6. At federal insistence, neither model permits claims based on aboriginal rights or title to be brought forward. It might also be observed that the federal government has insisted on narrowing the scope of "specific claims" in other ways (e.g. excluding claims less than 15 years old) in order to permit a better focus. There are no doubt challenging, complex and distinctive issues involving the Metis that could be, and should be, the appropriate subject of another dialogue in another system.

In the meantime, the AFN hopes and expects that the federal government will finally pick up where the JTF left off, and restore reason and dialogue to the creation of a just, effective, independent and accessible process for resolving specific claims.

Sincerely,  
Phil Fontaine  
National Chief

• (1610)

**Hon. Jack Austin:** Honourable senators, while I am sure that we appreciate the invitation of the Leader of the Opposition to interrupt him at any time, the offer is difficult to accept under the *Rules of the Senate*. For that reason, I did not interrupt him.

However, I want to tell honourable senators, as I have many times, that the letter of Phil Fontaine was submitted by counsel of the AFN, Bryan Schwartz, and examined, discussed and questioned during the course of the committee's proceedings. All of this, honourable senators, comes down to a few simple points.

First, Bill C-6 was passed in the House of Commons and, therefore, the wishes of the House of Commons are now before us.

Second, the bill was referred to the Standing Senate Committee on Aboriginal Peoples, which held hearings over several weeks to examine the issues.

Third, I have spoken four times on the merits of the bill and pointed out a number of key features. The bill enables negotiations and, as Senator Chalifoux said earlier today, does not require any Aboriginal community to submit itself to the processes of the bill.

Fourth, the joint task force spent two years in discussion, from 1996 to 1998. It made recommendations, but the government has not been able at this time, and in the development of policy in this sector, to accept a number of the recommendations of a technical working group. While I highly commend the process of discussion between representatives of the AFN and the Department of Indian Affairs and Northern Development, the government must decide what is appropriate in the governance of all issues and, in particular, of these issues.

The letter from National Chief Fontaine makes clear that a major objective of the AFN — and perhaps the second most important objective of the AFN — is to be given legislative status, and the Government of Canada is not prepared to do that. It is not prepared to create a legislative basis for the AFN, which now exists as a legal entity under the Canada Business Corporations Act.

This chamber should give careful consideration to the policy of official parliamentary standing — statutory standing — of the AFN. That should be considered on its own merits, on its own issues and with the Aboriginal community as a whole. We have not had a submission from major leaders across the country in respect of a legislative standing of the AFN. That they support the AFN in its current legal status does not mean that they agree, either in principle or in detail, to legislating the status of the AFN.

The first most important point is that those who advocate the postponement or cancellation of this legislation do so for a political reason. In my opinion after listening to the evidence, they

do not concern themselves principally with specific claims under existing treaties and agreements. They are using this bill to try to establish an order of sovereignty for First Nations. Perhaps that is desirable.

I participated in the joint committee of the Senate and House of Commons in 1980-81. I was very proud of the creation of section 35 and I remain so to this day. Whether the people of Canada will be ready in my parliamentary lifetime to accept a third or fourth order of government remains to be seen. Certainly, that issue should not be included in Bill C-6.

Many major issues relating to Aboriginal relations have been brought into this bill by Senators Gill, Watt and Adams and will have to be dealt with by Parliament, hopefully in the near future. They are not pertinent to this proposed legislation.

Many people want to ride extraneous issues into a simple bill that is an attempt to create an independent tribunal for the adjudication of specific claims. I want honourable senators to understand that point. Please do not be confused by the merits of various arguments. In Bill C-6, we cannot and we do not set out to solve the problems that beset the Aboriginal communities of Canada. The bill tries to solve one problem — specific claims under existing legal treaties and agreements. We are trying to move from an Order in Council regime that was started in 1983 and amended and improved in 1991, as I said previously. We now want to create a statutory process so that the tribunal can meet the test of independence in its adjudication. That is what Bill C-6 is about. It is not about all those other issues that deserve to be dealt with otherwise.

Honourable senators, the government has withdrawn Bill C-7, on the subject of governance, from its Order Paper. Many of the issues raised in this chamber would be properly argued when that piece of legislation is brought forward.

I could continue but I believe that I have given honourable senators the clearest possible basis for understanding the arguments on behalf of the government and the arguments on behalf of others.

[Translation]

**Senator Gill:** Honourable senators, with his permission, I would like to ask a question of Senator Austin.

Honourable senator, you seem to have been suggesting that, in your interpretation, the Assembly of First Nations is asking for a legal status through Bill C-6. I do not know if it was your idea to put it that way, referring to a legal status.

I will tell you that there is a big difference between a "legal status" — as I imagine you are aware — and a "request for real consultation." You have recognized in this chamber yourself, honourable senator, that even if there were consultation and that it pointed to opposition to the bill, you did not have to take into account the consultation process with the First Nations.



My question is the following: Does the letter of the Chief of the Assembly of First Nations ask for a legal status?

[English]

**Senator Austin:** As we like to say, honourable senators, the letter speaks for itself, and the letter is clear on that subject.

• (1620)

**Senator Kinsella:** Honourable senators, the situation we are in now is clear, where members of this house who have a special responsibility for the Aboriginal peoples of Canada have risen in this place and have asked this house not to proceed along the line that we are proceeding along. Therefore, I call upon the government to withdraw this time allocation motion.

Surely, the government does not need any more explication as to why it ought to withdraw this time allocation motion. The fact of our mandate as senators with special responsibilities for minority communities in Canada should speak for itself — along with the fact that two of our distinguished colleagues have spoken very articulately and reasonably — leads me to question why the government would use this particular power. It is like bringing in a sledgehammer to go after the proverbial mosquito.

Honourable senators, the government is asking by this motion to bring down the guillotine. Why does the government believe it has to use such a radical instrument to bring to conclusion the debate in this matter?

As Senator Lynch-Staunton has pointed out quite clearly, the bill is before us at third reading, it has amendments attached to it, and the amendments are supported by the government, which has a vast majority in the other place. There is no fear that the bill will be lost in the other place, and there is no fear that it will be lost here, given the majority and the dominance of the Liberal caucus in the Senate.

The fact of the matter is that there is lots of time. We have until December 19 for this matter to be dealt with, unless, as has been suggested earlier, the government plans to adjourn Parliament on November 7 — because this government does not want to come back to the House of Commons after a new leader of the Liberal party is elected for fear that it may face a non-confidence vote, which it would probably. The government would fall, I am sure, with a non-confidence vote, after Mr. Martin is elected leader of the Liberal party. That, honourable senators, is putting Parliament at the hands of the Liberal party. All of a sudden, the Liberal party is more important than even Parliament. It is certainly more important than the backbenchers, because they do not count for very much.

**Senator Cools:** Here, too!

**Senator Kinsella:** Honourable senators, I know we do not have the power. We do not have the numbers — we can count — in the opposition in this place. This house is dominated by the Liberal senators. However, honourable senators, our Aboriginal senators, our First Nations senators, have risen in this place and have made argumentation. Our status Indian members have risen in this

place and have made convincing, rational, reasonable arguments as to why this bill should be dealt with in the manner in which they have articulated. It seems to me that the majority in this place should be listening extremely carefully to those speakers they have told us.

I am concerned, honourable senators...

**Senator Chalifoux:** If I do not have status, I am discriminated against.

**Senator Kinsella:** I am concerned, honourable senators, that the use of the guillotine method of time allocation is totally without warrant in these circumstances. There is lots of time on the parliamentary agenda. Is the government suggesting, because they have a secret date in mind of November 7, that even our First Nations people will be ignored and trampled over because of the rush to protect the legacy? That is some legacy, honourable senators, to pick on the weakest of society.

Honourable senators, time allocation is totally unwarranted in this circumstance. The motion should be withdrawn. However, let me turn to the substance — and beyond the process — of our debate.

There are at least six questions raised by Chief Fontaine's letter that need to be underscored. The first one is that this bill is an attempt to change the role of the First Nations people as represented by the Assembly of First Nations. Why, one could ask, did the government not continue the process that was suggested by the JTF? Chief Fontaine suggests to us that this bill — and I quote:

...continues, rather than resolves, the problems of the past, including delay and conflict of interest on the part of the federal government.

Second, Chief Fontaine says, and I quote:

Serious legal and constitutional issues have been identified with Bill C-6. The Bill is not only unsound in policy terms, but incompatible with principles of natural justice...

That alone, honourable senators, should be cause for serious reflection by this house — and particularly by this house. Chief Fontaine goes on and particularizes one area of natural justice failure of this bill, and that is the adjudicative body that, in his mind, is not genuinely independent.

His third question that has gone unanswered speaks to the promised reserves that were never received. With respect to those kinds of issues, Chief Fontaine says that they were not adequately recognized nor addressed by the Senate committee.

Chief Fontaine's fourth question, which remains an open question — why are we going to close the debate when we have these many outstanding questions from the Assembly of First Nations — speaks to the amendments that we have adopted from the committee. In his view, they are quite inadequate.

Listen to this, honourable senators. This is from Chief Fontaine. He says that the Assembly of First Nations has never been given an opportunity to comment on the amendments. I will read from the letter, to make it perfectly clear. This is what Chief Fontaine said in the letter of interest at the table, and which has been read into the record today by Senator Lynch-Staunton:

The Senate amendments proposed so far are inadequate. The AFN has never been given an opportunity to comment on them before a Senate committee.

• (1630)

Point number five, honourable senators, is that Chief Fontaine, the elected Chief of the Assembly of First Nations, told us that the federal government was pushing ahead unilaterally to impose a fundamentally unjust bill. Having the chief say in writing that this is an unjust bill sends chills up one's spine.

I conclude with point number six.: The Chief of the Assembly of First Nations said one of the most problematic aspects of Bill C-6 is its attempt to eliminate the Assembly of First Nations itself from its role.

Honourable senators, I think that the government, if it were prudential, knowing there is all kinds of time, ought to withdraw this motion for time allocation.

**Senator Cools:** Honourable senators, I thought Senator Kinsella was asking Senator Austin a question. I wanted to ask him a question.

**The Hon. the Speaker:** I was about to rise to indicate that Senator Kinsella's time has expired. I was assuming you were going to want to ask him a question.

**Senator Cools:** When Senator Kinsella was speaking, I thought he was in the process of putting a question to Senator Austin, but I guess the calendar has moved on a bit.

**Senator Robichaud:** Order.

**Senator Cools:** Does Senator Kinsella have some time left so that he can perhaps take a question?

**The Hon. the Speaker:** I regret to advise honourable senators that Senator Kinsella's ten minutes have expired.

**Senator Carstairs:** Question.

**The Hon. the Speaker:** Is the house ready for the question?

**Senator Cools:** No, no.

**The Hon. the Speaker:** Senator Cools, you have spoken.

**Senator Robichaud:** Order.

**Senator Cools:** I rise on a point of order. We have heard very clearly that there is usually a philosophical and a moral basis to warrant motions of closure.

**Senator Robichaud:** Order.

**The Hon. the Speaker:** Senator Cools, I find myself in this difficult position of having to weigh the interests of the senators in their desire to speak and the interests of the Senate as a whole in its desire to have adherence to the rules and to move on to one of the most important things that it does, and that is vote on motions. The floor is open if other senators wishing to speak. You have spoken, Senator Cools, so I cannot see you again.

If other senators wish to speak, please rise.

**Senator Cools:** Your Honour, I was not asking you to see me again.

I am quite in order, honourable senators. It is the government that is out of order. It is the government that is expecting honourable senators to vote without proper explanation and proper justification. I am quite in order.

Yes, Your Honour, you do have a role in determining order, but that role does not mean that you can unilaterally cut off senators who are trying to raise points of order. The fact of the matter is that there is a point of order before us. The fact of the matter is that this chamber is being asked to repress and to oppress members' rights to debate by introducing this particular motion. These motions have a long history of acrimony.

**Senator Robichaud:** Order.

**Senator Cools:** I must say, Your Honour, I find it very tiresome and very tedious, again and again, when I rise to speak in this chamber, that the Deputy Leader of the Government in the Senate calls out "Order" and immediately Your Honour springs to his feet. That is out of order.

**Some Hon. Senators:** Oh! Oh!

**Senator Carstairs:** Shame, shame.

**Senator Cools:** That is out of order. I know the system quite well.

**Senator Carstairs:** Shame!

**Senator Cools:** There is absolutely no reason for any discipline here. What gives the deputy leader the right? The deputy leader was out of order. I ask Your Honour —

**The Hon. the Speaker:** I was listening to Senator Cools to see whether there was something in her comments that related to the rules or the practices of Parliament as described in our texts to which we normally refer.

**Senator Cools:** I have not made them yet.

**The Hon. the Speaker:** I have not heard anything that gives me reason to believe that there is a point of order here. Accordingly I ask again, is there an honourable senator wishing to speak? If there is not, I would ask if the house is ready for the question.



**Senator Robichaud:** Question!

**Some Hon. Senators:** Question!

**Senator Cools:** No, we are not ready, Your Honour. The chamber is not ready for the question. I think that is crystal clear and that has —

**The Hon. the Speaker:** Senator Cools, I am sorry that I cannot see you to speak again. I regret that —

**Senator Cools:** We should not use closure —

**The Hon. the Speaker:** Is the house ready for the question?

**Some Hon. Senators:** Question!

**The Hon. the Speaker:** Senator Kinsella, you had a point —

**Senator Cools:** This is out of order, Your Honour. You should not allow this, Your Honour. As a matter of fact you should be the one who is called out of order —

**Senator Robichaud:** Put the question. Let's go.

**The Hon. the Speaker:** I see no senator rising to speak who is eligible under our rules to speak.

Did you have a question, Senator Kinsella?

**Senator Kinsella:** On a totally different topic, honourable senators, I think it would be helpful to all members if we understood exactly the rules that govern us as we proceed now under the motion for time allocation. Perhaps the Speaker might want to review that. In terms of the voting, what happens after the vote? For example, honourable senators, it may be important to realize that, should the motion carry, we would go immediately into the debate and we do not see the clock. It would be important for all honourable senators to know how it works. Maybe the Speaker wants to —

**Senator Robichaud:** Question!

**The Hon. the Speaker:** I have heard you, Senator Kinsella.

I would refer all honourable senators to the rule and reading it will not change it. I rely on honourable senators to inform themselves as to the provisions of the rules.

I proceed now to look once again to the house to see if another senator wishes to speak who is entitled to speak.

I see no one rising. Accordingly I will put the question.

It was moved by the Honourable Senator Robichaud, seconded by the Honourable Senator Rompkey:

That, pursuant to rule 39, not more than a further six hours of debate be allocated for the consideration for third reading of Bill C-6, to establish the Canadian Centre for the Independent Resolution of First Nations Claims to provide for the filing, negotiation and resolution of specific claims and to make related amendments to other acts;

That, when debate comes to an end or when the time provided for the debate has expired, the Speaker shall interrupt, if required, any proceedings then before the Senate and put forthwith and successively every question necessary to dispose of the third reading stage of the said bill; and

That any recorded vote or votes on the said question shall be taken in accordance with rule 39(4).

Is it your pleasure, honourable senators, to adopt the motion?

**Some Hon. Senators:** Yes.

**Some Hon. Senators:** No.

Will those honourable senators in favour of the motion please say "yea"?

**Some Hon. Senators:** Yea.

**The Hon. the Speaker:** Will those opposed to the motion please say "nay"?

**Some Hon. Senators:** Nay.

**The Hon. the Speaker:** I believe the "nays" have it.

*And two honourable senators having risen:*

**The Hon. the Speaker:** Call in the senators. The bells will ring for one hour, meaning the vote will be taken at 5:40 p.m.

• (1740)

Motion agreed to on the following division:

#### YEAS THE HONOURABLE SENATORS

Austin  
Banks  
Carstairs  
Chalifoux  
Christensen  
Cordy  
Day  
De Bané  
Fairbairn  
Finnerty  
Fraser  
Furey  
Graham  
Hubley  
Kenny  
Kirby  
Kolber

Kroft  
LaPierre  
Maheu  
Merchant  
Milne  
Moore  
Pearson  
Phalen  
Poulin  
Ringette  
Robichaud  
Rompkey  
Smith  
Stollery  
Trenholme  
Counsell  
Wiebe—33

### NAYS THE HONOURABLE SENATORS

Andreychuk  
Atkins  
Beaudoin  
Carney  
Cochrane  
Cools  
Corbin  
Di Nino  
Forrestall  
Gill  
Gustafson  
Johnson

Kinsella  
Lawson  
LeBreton  
Lynch-Staunton  
Meighen  
Nolin  
Oliver  
Prud'homme  
Robertson  
Spivak  
St. Germain  
Watt—24

### ABSTENTIONS THE HONOURABLE SENATORS

Bacon  
Ferretti Barth

Gauthier  
Mahovlich—4

### SPECIFIC CLAIMS RESOLUTION BILL

#### THIRD READING—MOTION IN AMENDMENT— DEBATE CONTINUED—VOTE DEFERRED

On the Order:

Resuming debate on the motion of the Honourable Senator Austin, P.C., seconded by the Honourable Senator Joyal, P.C., for the third reading of Bill C-6, to establish the Canadian Centre for the Independent Resolution of First Nations Specific Claims to provide for the filing, negotiation and resolution of specific claims and to make related amendments to other Acts, as amended,

And on the motion in amendment of the Honourable Senator Gill, seconded by the Honourable Senator Watt, that Bill C-6 be not now read the third time, but that it be read a third time this day six months hence.

**Hon. Charlie Watt:** Honourable senators, I hope the majority of honourable senators will still be here as I outline seriously the matter with which we are dealing.

I am pleased to participate in debate on legislation that was formulated in the other place and sent to the Senate some time ago. It was referred to the Standing Senate Committee on Aboriginal Peoples and studied by that committee. I will not repeat exactly what I have said in the past in regard to the conduct of the committee itself.

I sincerely believe that this legislation is bad legislation. It will help neither the government, nor the Aboriginal people.

It is time for us to understand the role and responsibility of parliamentarians. I, for one, feel at times that I am not being heard by the majority in this place. Unfortunately, they happen to

be members of my party. That is too bad. That is the way it is. Hopefully, in the future, it will change.

I hope the next leader of the government will look seriously into whether we have provided legislation that is nothing more than an obstacle to the benefit of the country and the Aboriginal people in terms of their moving forward. At times we pass laws without taking into consideration the consequences.

I speak now of looking at things economically. In that regard, we have not examined this bill enough. What does it mean in the long run economically to the country as a whole? We have not examined that closely at all. In fact, I do not think we ever have. For that reason, I am very disappointed.

Our role and our responsibility is to uphold the importance of this institution. In that regard, honourable senators, today, we have failed once again.

As Aboriginal people in this country, we work hard to stay alive, to survive, economically, socially, politically, educationally — you name it.

At times, we are very disappointed when certain actions are taken by our southern neighbours — that is, the government. Once again, we have seen that today. Once again, I point out that I hope this will change in the future.

• (1750)

Maybe I am optimistic, but I have a job to do. Like it or not, there comes a time when I have to take a stand; there comes a time when I have to say things people might not want to hear. I have responsibilities. My responsibilities are to the people who are under-represented. I honour the Senate. The role of the Senate is to represent the regions and the minorities that are not fairly represented by the House of Commons. More important, we have responsibility for the Aboriginal people, whom I think we have failed again today.

I do not know what it is that honourable senators do not want to hear. If Aboriginal people are given an opportunity to grow and flourish, will that become an obstacle to the society of this country? I do not think so. We should take the view that this would improve relations between the two groups. It will also be beneficial economically.

I heard a man, invited by the Assembly of First Nations, address a large crowd of Aboriginal people. He highlighted how important it has always been and still is today for Aboriginal people to move ahead and improve themselves. I was very encouraged by this man's willingness to bring Aboriginal people forward at the same time as he tries to bring the rest of the country forward. That man will probably be our next Prime Minister.

He spoke from his heart, I believe, using as an example two canoes going down a river side by side, with open dialogue and a positive future for all. Today, I see one canoe way ahead and the other canoe, in the midst of legal uncertainties, way behind. This is not what is supposed to happen.



Honourable senators, I am running out of words, because I have been dealing with this bill for a long time, trying to persuade individual senators. I have been speaking in committee and in the Senate chamber, trying to persuade senators how important it is that we not allow this bill to pass because it is not good for Aboriginal people, it is not good for government as a whole and it is not good for the country.

Honourable senators, as I indicated in my remarks on closure, I would now like to move a motion to suspend debate on Bill C-6 until the arrival of a new government, when a new approach will be taken. I hope you will take this very seriously. I move, seconded by Senator Gill, suspension of debate on Bill C-6. Senator Gill earlier moved for a six-month suspension. My motion is that we wait for the arrival of the new government with a new approach.

**The Hon. the Speaker:** Honourables senators, I see several procedural problems. First, there is already an amendment before the house. Accordingly, a sub-amendment would be the only type of amendment we could consider. The motion proposed by Senator Watt is not a sub-amendment to a hoist motion.

Even more serious, rule 39(7) of the *Rules of the Senate* governs the procedure when a matter has been made subject to time allocation. Rule 39(7) reads as follows:

When an Order of the Day has been called, to which a specified period of time has been allocated for its consideration, the same shall not be adjourned and no amendment thereto, nor other motion, except that a certain Senator be now heard or do now speak, shall be received.

The rule is clear that, now that we have passed the time allocation motion, we are not able to receive any amendment to the matter under debate, which is, of course, the amendment of Senator Gill.

I, unfortunately, have to rule the amendment out of order.

**Hon. Anne C. Cools:** Your Honour, you were not asked for a ruling. No one in this chamber raised a point of order and no one questioned Senator Watt's initiative. The custom in this chamber is that Speakers do not rule on points of order unless they are asked.

I recall to honourable senators that only a week or two weeks ago it was His Honour who was busy entertaining all manner of amendments and sub-amendments simultaneously, or consecutively, and I was the one on my feet insisting that sub-amendments should be amendments to the amendments. I believe His Honour, at the time, overruled me and said that we are very flexible in the Senate and that we can allow these different motions, amendments and sub-amendments simultaneously. You will remember that I, in jest, at one point said to another senator, "Perhaps you could take the adjournment on the main motion and he could take the adjournment on the sub-amendment."

There is an inconsistency here. Granted, there are some very real procedural problems with what Senator Watt has proposed. However, I would suggest that Your Honour has acted precipitously in ruling him out of order for two reasons. First, you were not asked to rule. Second, if the situation were clarified, Senator Watt might be prepared to withdraw this initiative and place it in another way before the chamber, because he is actually asking for the issue to be discussed.

I do not know how to ask you to rule on yourself, Your Honour, but in a funny kind of way that is what is happening here. There is no point of order because no point of order was raised.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I had assumed that His Honour was operating under rule 18(1). Perhaps I am mistaken.

**The Hon. the Speaker:** I was not raising the problem as a point of order but rather as a matter I wished to draw to the attention of Senator Watt.

• (1800)

I suppose if the chamber wished to hear an amendment under the unanimous consent provisions that that might be possible. However, I was not trying to find Senator Watt out of order. I was proceeding under the rule we were operating under. The motion that the honourable senator put was not one that we could receive in accordance with the rules. That is all I was trying to do.

**Senator Cools:** I understand.

**The Hon. the Speaker:** I take your criticism, Senator Cools, and I will try to be more reticent in the future in terms of raising these matters.

**Senator Cools:** No, I know that Your Honour has no improper intention; I am absolutely certain of that. These things are just very honest mistakes. However, Your Honour is free to enter the debate at any time. That is one of the wonderful things about this chamber. The Speaker has a vote and can take part in the debate. Tradition has it that, when the Speaker chooses to enter a debate, he should leave his chair and go to his seat as a senator and raise the point from there. This is an old and worthy tradition. However, I know that there was no improper intention on the part of Your Honour.

**The Hon. the Speaker:** On the question of order, Senator Carstairs.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, with the greatest of respect to Senator Cools — and thanks to Senator Kinsella, because he has laid before the chamber the procedure by which the Speaker is directed to behave. Rule 18(1) reads:

The Speaker shall preserve order and decorum in the Senate. In doing so the Speaker may act without a want of order or decorum being brought to his or her attention. Furthermore, the Speaker shall be authorized to act on his or her own initiative to interrupt any debate to restore order or to enforce the *Rules of the Senate*.

**Some Hon. Senators:** Hear, hear!

**Senator Cools:** Your Honour, what Senator Carstairs has put before us is certainly a misapprehension if not a misunderstanding of rule 18(1). I was in the Senate when rule 18(1) was positioned, and I know very well the intentions.

It is true that rule 18(1) was intended to give the Speaker some opportunity or power to act on his own initiative. However, the prerequisite condition to that must be a state of disorder in the chamber. Disorder does not mean a mistaken assumption on the part of a member or a mistake in procedure or, perhaps, moving a defective motion or something of that nature.

The power of the Speaker in this rule was intended to be able to act in the instance of real disorder, as we saw in the case of the GST, where one could have said that the senators were in a state of aggression and agitation. I appreciate the explanation of Senator Carstairs in regard to this rule. However, with all due respect, I understand the rule, and the rule was put there as a protection against grave disorder.

The system of the Senate, after all, is that senators are supposed to be the master of their own chamber, much more so than the members of the House of Commons. The system is such that if a senator makes an incorrect, insufficient or deficient proposal, there should be enough senators on the floor of the chamber who realize that such a mistake has been made and who will rush to their feet to be able to assist the senator and to correct the situation.

When it comes to understanding and implementing these rules, we would do well to follow not only the words of the rules, but also the principles of the rules. The principles are that the chamber should have an opportunity to decide what to do with Senator Watt's motion. I believe that is the state of affairs and where the debate stands.

Senator Watt has made a proposal that may be wrongly put, but if Senator Carstairs wants his proposal ruled out of order, she must rise and say in a reasoned way, and cite precedents and authorities, why Senator Watt should be ruled out of order.

**Hon. Gerry St. Germain:** Honourable senators, I should like to propose a question to Senator Watt, if the time for his intervention has not expired.

**The Hon. the Speaker:** The time for Senator Watt's intervention is still running, if you would like to put a question to him.

**Senator Cools:** You may ask him a question, but he is not out of order. That is the whole point.

**Senator St. Germain:** I am not interfering with a point of order, am I?

**The Hon. the Speaker:** No, Senator Watt was never out of order. It was his motion that was unacceptable because of the rule that I read. Senator Watt still has seven minutes of time, and you may use that if he will take a question.

**Senator St. Germain:** Will the honourable senator accept a question?

**Senator Watt:** Yes, I will.

**Senator St. Germain:** Honourable senators, I sit here in bewilderment to a degree because I see two of my Aboriginal friends and colleagues on the government side of the house who have traditionally supported the government in most aspects. On certain bills, such as C-68, these senators questioned issues that were so outlandishly discriminatory against Aboriginal peoples but, in the final analysis, they did everything they could to support the government.

Here we have proposed legislation that seems so egregiously flawed that two of our Aboriginal colleagues say that they will stand, debate and do everything they possibly can to hoist this bill for six months, as was the last request. They asked that the bill not be passed at all, but they have now asked that it be hoisted for six months. I find that to be a reasonable request based on their opposition.

I ask a simple question: Of all things in Bill C-6 that offend our Aboriginal peoples, what is the most repugnant part of this bill, the part that makes it unacceptable to our First Nations people? I should like to have an answer to that question, and then I should like to ask a supplementary question.

**The Hon. the Speaker:** I know that some honourable senators have asked why we have not risen, it now being past six o'clock. When we are on an item for which time allocation has been passed pursuant to motion, as we are now, the rules provide that we not see the clock. In other words, we proceed through. Our only limits are the six-hour time period, which would be applicable in this case, or midnight, midnight not being applicable because the expiration of six hours will occur before midnight.

**Senator Watt:** I am glad that the honourable senator has asked me the important question of what is important and fundamentally wrong with this proposed legislation in regard to how the proposed legislation will affect Aboriginal people.

Honourable senators, I highlighted four areas to focus on in regard to the argument of legal implications and infringement of constitutional rights. These four items were included in the amendment that I put forward earlier.



The cap on claims was \$7 million and was raised to \$10 million. That figure is still not acceptable. I do not think we should be setting a precedent. In a sense, we are putting a ceiling on what Aboriginal people can claim. That is not fair.

• (1810)

The other area is the fact that the Minister of Indian Affairs, going back to the time that section 91.24 of the British North America Act was created, was given a role not only to accommodate, but to supervise and to help the Aboriginal people. The minister understood that his responsibility was to run the lives of the various individual people at the community level — at the reserve level. I do not think this is acceptable.

Those are two areas that I can point out that will never be accepted by Aboriginal groups.

What is wrong with the bill itself? First, it is not bulletproof. We heard Senator Lynch-Staunton read a letter that was forwarded by Chief Phil Fontaine of the National Assembly of First Nations. He mentioned that a number of areas still require some clear examination. The Standing Senate Committee on Legal and Constitutional Affairs wanted to be given full opportunity to study the issues raised and consider how they can be addressed constructively. It wanted to determine if the Department of Justice had a technical response to be documented and released for public scrutiny and comment. A letter coming from a national chief outlining what is wrong with this bill is, to my mind, important.

Once again, honourable senators, I do not know what else I can say other than the fact that, once again, the Aboriginal people are not being listened to.

**Senator St. Germain:** May I ask a supplementary question?

**The Hon. the Speaker:** Before you do that, Honourable Senator St. Germain, I must advise that Senator Watt's 15 minutes have expired. He may ask for time, however.

**Senator Watt:** May I have an extension of time?

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Some Hon. Senators:** Yes.

**Some Hon. Senators:** No.

**The Hon. the Speaker:** I am sorry, Senator Watt, leave is not granted.

**Senator St. Germain:** Although Senator Watt's 15 minutes have expired, does he still not get a certain time allocation for questions and answers?

**The Hon. the Speaker:** No, that must be done within the 15 minutes. Unless he is granted leave for additional time, that is not possible. You can speak, however, Senator St. Germain.

**Senator Cools:** Your Honour, I heard no leave denied. Maybe I was sitting too far away.

**The Hon. the Speaker:** Leave can only be granted without a dissenting voice, and I heard a "no."

**Senator Lynch-Staunton:** They are imposing closure on closure. That is really neat!

**Hon. Laurier L. LaPierre:** Is it possible that Senator St. Germain said "no" because he did not totally understand or comprehend what was going on?

[Translation]

**Senator St. Germain:** I am not the one who said no. It was the Leader of the Government.

[English]

**Senator Cools:** I think Senator St. Germain should get on his feet and answer that question because the "no" came from down the aisle. The "no" did not come from this corner.

**Senator LaPierre:** I am suggesting that he misunderstood. I am not suggesting that he said "no" to Senator Watt having extra time. I do not want my attempt to be construed wrongly, which would be valid under normal circumstances, but in this case it is not.

**Senator Robichaud:** Debate.

**Senator Watt:** Your Honour, do I still have seven minutes, or is it gone?

**The Hon. the Speaker:** No, unfortunately the allotted 15 minutes have expired. The rules provide clearly that there is an opportunity for senators to put questions and make comments, but it is within the senator's time. Unfortunately, Senator Watt's time has expired. I point out that we have not included in his time the time that was taken with the point of order that was raised.

Do you wish to speak, Senator St. Germain?

**Senator St. Germain:** May I partake in the debate?

**The Hon. the Speaker:** Yes.

**Senator St. Germain:** Honourable senators, I find myself bewildered and disappointed by the government on this particular bill. Simply put, I had always hoped — maybe I am dreaming in technicolour — that somewhere in this world we would be able to deal with certain issues in a non-partisan, open-minded way, in the best interest of the constituency that we are trying to serve. That constituency happens to be our own Aboriginal peoples. I will go off Bill C-6 for a moment.

I am a Metis. Our people have been recognized in the Constitution since 1982; yet, we have not been recognized as such. We have had to pursue everything through the courts. Any rights that we have had as Metis people have not been recognized legally within the system unless we have pursued them through the courts. The *Powley* decision that just came down is a glowing landmark of recognition. When Senator Austin was putting forward the case for the government on Metis rights, this issue was brought to the committee simply because of this landmark ruling. It was deemed to be in the interest of everyone that it should be at least discussed at the committee level and in this place, which it was. He proudly got up and stated, "Well, in the 1982 Constitution, we gave our Metis people certain rights," but these rights were not granted. They were written rights, but they were never put into force.

From the inception of the Indian Act, honourable senators, we have done things to these people, not for them. It is strictly "we know best." We have established an empire in the Department of Indian Affairs and Northern Development that has dictated and tried to dictate down, as Senator Watt said, right to the reserve level — telling individuals how they should live, what they should do, how they should raise their families, how they should assimilate with the rest of the communities in this country, and how they should be forced to go to a residential school and not speak their language. We denied them of their traditional ways. Now, we have a disaster on our hands. We have hundreds of thousands of Aboriginal peoples in our inner cities. They are without a compass. They wander around with no hopes, no dreams and no aspirations. This is all as a result of doing things very similar to what is being done here today.

• (1820)

Senator Gill has been a chief. He has worked for the Department of Indian Affairs and Northern Development as a regional director. Senator Watt has been a chief in his area; Senator Adams has been a leader in his community. They would not be saying what they are saying, or doing what they are doing, if they did not see justification and the need to do something. I wonder when we will truly grasp this challenging part of government, and do it in a manner that reflects the best interests of the constituency of the people we are trying to serve.

We talk about a cap — and they are worried about the fiscal well-being of the country, which is a proper way of approaching things. Indian and Northern Affairs Canada has a total budget in excess of \$10 billion. Why would we impose a cap, where the lands in question under specific claims have been taken away from these people where these people have been denied the right to use these lands, for some odd reason? I cite as an example the Okanagan Valley of British Columbia, where native lands were designated to the native peoples of the Penticton area. The natives were denied the use of this land, and now we are saying that this is a big deal. I just cannot understand.

The economics do not line up. It does not make sense to put a cap of \$7 million when there are billions of dollars in this ministry. I no longer know the exact percentage, but the

percentage that goes towards administration is mind-boggling. It is in the billions of dollars. The government is suggesting a cap, when in fact they are dealing with something that has been taken away from these people after it was given to them. Why put a cap on it and restrict them? The whole process was to expedite and bring justification to these people so that they would be treated justly with regard to these claims that have been denied them for the last 100 and some years.

Phil Fontaine, the Grand Chief of the AFN, has requested that the bill go to the Standing Senate Committee on Legal and Constitutional Affairs. Obviously, there must be some sincere thought and assessment on the part of that particular organization, which is representative of a vast number of our Aboriginal peoples across this country. They have asked for this. There must be some reasonable justification for this request. I cannot believe that honourable senators would try to rush something through this place when a simple request of this nature is made.

I am not trying to take anything away from the Aboriginal Peoples Committee, because I have sat on that committee over the years. However, there are particular matters that should be considered by certain committees because of the expertise within these committees. Senator Austin has tried valiantly to give us a reason why this bill must pass, but it is not justified, given the constituency we are trying to serve.

The appointment of commissioners is another consideration. I realize that this is a sensitive area, but as opposed to placing this in the hands of the department and the minister instead of satisfying both sides, the government and the Aboriginals, a middle ground could have been established with the appointment of these commissioners that would have given a transparency to the process, so that at least there would have been a certain amount of comfort given to our Aboriginal peoples. Honourable senators, there is always a recourse. I am sure that any recommendation from a commission would include checks and balances. I have a lot of respect for the taxpayers' dollars, but I also have a lot of respect for our Aboriginal peoples. There must be a balance. You cannot say you will do something and then really not do it.

What I am hearing from Aboriginal peoples is that this proposed legislation is window dressing, aimed at making the world believe that we are doing something positive for them. In reality, it could end up being more of a hindrance — it could reduce the value of their specific claims. By virtue of putting a cap on anything, it often forces people to accept less by virtue of seeking a settlement. I believe that is unfair to them.

Honourable senators, I realize that the majority rules and that we live in a democratic society. The government, obviously, has invoked closure against a minority group of people who are virtually powerless in society. This is a huge disappointment. Their representatives are fighting valiantly in this place and before the committee. In the committee hearings that I attended, the majority of Aboriginal people who appeared before the



committee were opposed to this legislation in the form it was being presented. I hope other pieces of legislation coming forward vis-à-vis Aboriginal peoples. If we continue on this path, we will erode any possibility of truly helping our Aboriginal peoples. If every time they turn around there is total despair in anything they try to deal with, how is it possible for them to have hope and to have dreams and aspirations?

As I started speaking today, I thought of our inner cities and what has happened in the past. Be it not for the grace of God, as an Aboriginal person or as a Metis, for there go I in our inner cities, where our people walk aimlessly around with no direction and no hope. The paternalistic attitude of INAC has virtually inhibited them from developing their rightful position and their rightful roles in our society. Whether it was the reserve type or the residential schools, or the litany of legislation that has come down in regard to them that has really impinged and gone right to the lower levels of the community through INAC, I think it is horrific.

Senators Watt and Gill have put up a valiant struggle on this piece of legislation, but, unfortunately, what I see here tonight is the will of the government doing what it has traditionally done to our Aboriginal peoples. As I said earlier, it is doing things to them instead of for them. I asked the government to reconsider Senator Watt's request of hoisting this bill for six months and giving it some serious thought. We will obviously have a new prime minister, and I would like to think that a different administration might look at the aspects of dealing with our Aboriginal peoples in a different light.

• (1830)

In saying so, I thank you, honourable senators, for your kind attention.

[Translation]

**Hon. Aurélien Gill:** May I speak?

[English]

**The Hon. the Speaker:** Senator Gill, I do not know but I will ask the Table. My list indicates that you have spoken to your motion and we are on your motion in amendment. An honourable senator may only speak once and you have spoken. You could ask a question of Senator St. Germain.

[Translation]

**Senator Gill:** Is my motion still with us?

[English]

**The Hon. the Speaker:** Yes.

[Translation]

**Senator Gill:** May I ask a question? I will start with a comment.

[English]

**The Hon. the Speaker:** Honourable senator, there are only a couple of minutes remaining.

[Translation]

**Senator Gill:** Honourable senators, we can see how history keeps repeating itself in this chamber. No matter how much we talk, chat, gripe, criticize, power is implacable. We are told: "We know what it is you need, we know your requirements, we will settle all that for you, just keep quiet and stay on your reserves." I see history implacably repeating itself.

I too hope for what Senator Watt has already talked about, and I still hold out hope that, in the end, we will communicate. That first requires respect for the other party, and interest in the other party. Otherwise it is clear there will be no communication. That is what we have been trying to establish ever since the beginning: communication between those who were already here, and those who have come since. Establishing that communication is a very hard thing to do.

All that I ask is that you try to recognize us some day, and I hope it will not take 50 years to do so.

My question for Senator St. Germain is this. I know he has already indicated that he has Metis status. Does he, in light of that status and of his experience, feel he is capable of taking part in a decision that is right for his fellow citizens? I do not know what percentage of Indian blood he has, but I presume it is the Indian side that makes him Metis or both? I presume that is it. Can he share his experience with us?

[English]

**The Hon. the Speaker:** Honourable senators, there is one minute remaining and Senator St. Germain should have an opportunity to respond.

**Senator St. Germain:** Senator Gill, I appreciate your concerns. I do not think I could walk in your moccasins because people such as you and Senator Watt have lived a different experience.

I can understand how you should be treated but I cannot understand your actual needs because I am not you; I am Metis. I am not Aboriginal and I am not First Nations. However, part of my cultural upbringing was Aboriginal and I also had a strong European influence in my life.

Until one walks in someone else's actual moccasins, which I have not done, one cannot fully understand. In respect of Aboriginal peoples, I am intelligent enough to recognize their plight in this country. I am saying, as I have said before, that the historical treatment of our native peoples is repeating itself here. It is a continuum and it does not matter which party is the government — Liberals, NDP, Conservatives or the Alliance. It is always the same, Senator Gill. The government tells native peoples what is best for them; and that is wrong, as you can see by the results.

My Metis relatives in Winnipeg are living amongst the Aboriginal peoples in our urban centres, and I see the results of the mistakes that were made. We are talking about responsibility. Our people are entitled to rights, but it is entitlement with responsibility and they want that responsibility. That is key, that is why they want to control their own destiny, and that is why they should control their own destiny.

**The Hon. the Speaker:** I am sorry, Senator St. Germain, your time has expired.

**Hon. Eymard G. Corbin:** Honourable senators, I rise on a point of order. By waiting the six-hour time limit for debate on this legislation before calling the vote, the government has taken its pound of flesh.

**Senator Cools:** That is right.

**Senator Corbin:** We have before us now a limited period of time for credible debate to continue until the guillotine falls. Your Honour, I say this with the utmost respect, but given the circumstances, there should be much leeway exercised to hear senators out on this issue. Six hours provides time for 24 senators, more or less, to take the floor and speak to the issue. Some senators will have their say in two minutes while others may need more time. We ought to exercise patience and provide whatever time is required to anyone who wishes to intervene and we ought not to cut anyone off, as the rule would provide.

As I say, the government has taken its pound of flesh — it will get its way. That is fine with me except in this instance because of the issues at hand; that is why I stand with Senator Watt and Senator Gill and others. There ought to be an accommodation for those who wish to put their opinions on the record, even though their allotted 15 minutes may have expired.

**The Hon. the Speaker:** The Chair is bound by the rules and Senator Corbin has raised a point for the Senate to reflect upon. I do not think Senator St. Germain had asked for leave to extend his time for a definite or limited period, but sitting in the Chair, I cannot divine sufficiently well the wish of each senator. A departure from the rules requires no dissenting voice.

I leave it to all honourable senators to take into consideration Senator Corbin's comment, which we all understood. I do not need to repeat that we have a limit on the amount of time to be spent. Is the 15-minute rule reasonable in that context?

Having said that, I have no choice but to live by the rules and do what I can to see that the rules are observed.

**Senator St. Germain:** Honourable senators, should I ask for leave to continue?

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

[ Senator St. Germain ]

**Senator St. Germain:** Senator Gill, to repeat what I said in response to your question concerning my self-image as a Metis, I cannot put myself in your shoes because I have never experienced what you have experienced. However, I can see the consequences of what has happened in this country as a result of governments not listening to people like yourself who have walked the walk, and not just talked the talk, of living as Aboriginal peoples, of trying to lead Aboriginal communities as chiefs and trying to work with a huge paternalistic bureaucracy like Indian Affairs.

• (1840)

At a meeting of the Rotarians in British Columbia the other day, I was asked that if I had my choice of eliminating a department in Ottawa, which one would it be? I thought carefully and I said — with great hesitation because I said that I would not want to further jeopardize our Aboriginal peoples — that the department that requires the most consideration would be the Department of Indian Affairs and Northern Development, not because of what it costs, but just because of what it does and what it has failed to do for our Aboriginal peoples.

I believe Bill C-6 is being driven by the department. It is the department that is driving this agenda, and it is the bureaucrats who are pushing it. This is an added control feature in their lives of how they can dominate and how they can dictate right to the lowest levels of our Aboriginal communities. That, I feel, is totally wrong.

I have the greatest of respect for Chief Stewart Phillip from Penticton because he has taken stands for his people. When he tells me that Bill C-6 is totally unacceptable in its present form and the way it has been drafted will not assist us in any way, shape or form, and may be more problematic for us, I bow to my Aboriginal colleagues here and those who came before us because they have the greatest to gain if this bill were to die on the Order Paper and the most to lose.

[Translation]

**Senator Gill:** Honourable senators, looking at how Bill C-6 is constructed, I have trouble seeing how this tribunal or the appointed commissioners or judges would be independent. I have a lot of trouble seeing that independence.

I am not a lawyer. They tell me that in Canada, judges must have some independence. Total independence, in fact, which is even more demanding. I cannot see that independence in this bill.

I think that sometimes there is a desire to create the illusion that we are about to do something new, create a new tool that did not exist before, to enable groups to hope a little more. I think we would be better off if we stopped creating illusions. Real action is needed. I should ask my question of a lawyer, perhaps.

Considering the experience of the honourable senator, could he, perhaps, answer my question? Can he see some independence; some hope that there will be a distinction made between the judge and the parties?



The problem we have is that the department will be acting both as judge and as one of the parties. Judges make rulings. As an interested party, as well, the department can see to it that it will not be too hard.

And what happens to the First Nations? I understand that we are minors under the law. The minister must always sign or co-sign on anything we do. But from there to leaving us the room to manoeuvre that would permit us to live and function normally and participate in the life of the country, that is a giant step.

What about independence? What about judges? Is there a double standard? Is there one way to appoint judges across the country and another way to appoint Aboriginal judges or judges to deal with Aboriginal institutions?

[English]

**Senator St. Germain:** I am no legal expert by any stretch of the imagination. The Department of Indian Affairs and Northern Development has never, in its history, wanted to relinquish an ounce of power. Its agenda is to maintain absolute and unequivocal control over the lives and the functioning of our Aboriginal peoples. This piece of legislation is obviously just an extension of this behavioural pattern.

Honourable senators, this pattern will never change until a government comes along — and I do not know who will lead the next government, if it is to be Paul Martin or perhaps Senator Andreychuk, if she decides to run for leader of the proposed Conservative Party of Canada — with the strength and the will to change the thought process that exists in that department.

That fiduciary responsibility that the minister and the government have toward our Aboriginal people has been used to the detriment, unfortunately, of our Aboriginal people. They have established this paternalistic attitude toward our peoples. They say, "If we do not treat you right, take us to court." This is the same adage. If it does not work, you always have access to the courts.

That should not be. Our people should not have to go to court for every cause. My understanding is that Bill C-6 is purely an extension of the department saying, "Look, we will name commissioners, and nobody else has any say." There is no arm's-length appointment. It is not like appointing judges to the Supreme Court or to our judiciary. It is strictly an extension of the department. We have to somehow break down a huge amount of the authority that the department has over our Aboriginal peoples.

**Senator Watt:** Honourable senators, I rise on a point of order. I would like to get back to my original motion in order to expedite this matter. Since I seconded Senator Gill's motion, I think it is only right for me to highlight the fact that I am prepared to make an amendment. If Senator Gill is agreeable, I move that the motion in amendment be amended by adding after the word

"hence" the following words: "when a new government and a new prime minister and a new approach are in position."

**Senator Carstairs:** The problem is, honourable senators, as His Honour has already indicated, that a further amendment at this time is not in order. It is not within the rules of this place to allow my honourable friend to make an amendment at this time. Senator Gill has moved a motion in amendment and that motion is still before us. However, it is not within Senator Watt's power, under our rules, to make a further amendment.

• (1850)

**Senator Kinsella:** Honourable senators, perhaps Senator Watt is suggesting that the amendment of Senator Gill be modified. In other words, rather than make a motion or a sub-amendment, we can have a clarification of the motion before us. I agree with Senator Carstairs that at this stage we cannot have any more amendments. Perhaps there would be unanimous consent for Senator Watt to repeat to us the correction he would like to bring to the motion that is before us.

**Senator Watt:** Honourable senators, I am agreeable to proceeding in that fashion.

**The Hon. the Speaker:** Do honourable senators wish to comment on Senator Watt's point of order?

**Senator Watt:** Honourable senators, may I read it again?

**The Hon. the Speaker:** I will ask you to read it.

**Senator Watt:** It states that Senator Gill's motion be further amended by adding after the word "hence" the following words: "when a new government and a new prime minister and a new approach are in position."

**Senator Cools:** Honourable senators, I am of the impression that this is what Senator Watt had been trying to do at the outset. What we have before us is a hoist motion. As honourable senators know, a hoist motion is one of the rare forms of motions that can be made at second reading. It does not matter if the rules say how many more amendments can be brought or not. The fact of the matter is that at second reading the number of motions and amendments that can be brought again is fixed and constant.

What Senator Watt is saying is consistent with what Senator Kinsella is saying. However, it is also very consistent with Senator Gill's motion. Senator Gill's motion is saying that the bill be not now read a second time but be read six months hence. Essentially, Senator Watt is putting an editorial comment on that motion in amendment saying when, and clarifying the hoist motion a little bit more. Senator Watt's motion would add those few words after the word "hence" in Senator Gill's motion.

Thus, what we have before us would be the same motion. It is still a hoist motion. That has not changed at all. The substance of the motion is that the bill be read this day in six months time. Thus, there is no alteration. If anything, Senator Watt is adding an editorial comment to it.

The fact of the matter is the hoist motion is in order. This motion was in order. This addition or modification is in order.

**The Hon. the Speaker:** Earlier on, I volunteered some comments by reference to the rules not in request for a ruling but to assist Senator Watt in terms of the orderliness of what he had proposed. I have now been asked by Senator Watt to rule in a formal way.

I begin by referring to the rule I quoted earlier, which is rule 39(7). It is fairly clear. It states:

When an Order of the Day has been called, to which a specified period of time has been allocated for its consideration —

— which is exactly what we have here —

— the same shall not be adjourned and no amendment thereto, nor other motion, except that a certain Senator be now heard or do now speak, shall be received.

The latter words refer to another provision of the rules that allows the Senate as a whole to override a decision of the Speaker when he or she sees a senator. That part of the rule is not relevant. I am explaining it because it can be confusing the first time it is read.

The rule is clear. No amendment can be proposed.

There are also the texts that we often use in cases such as this. The sixth edition of Beauchesne's deals with hoist motions, which is what Senator Gill has proposed and which is the matter we are debating now and have to deal with first before we return to the main motion.

Senator Gill, seconded by Senator Watt, moved a motion that the bill not now be read a third time but that it be read a third time this day six months hence.

Paragraph 668 of Beauchesne's sixth edition states:

A traditional way of opposing the second reading of a bill is to move an amendment to the question that deletes all the words after the word "That" and substitutes the following: "Bill C-..., An Act..., be not now read a second time but that it be read a second time this day (six months) hence."

Paragraph 669 states:

An established form of amendment such as the "six months" formula, used to obtain the rejection of a bill, is not capable of amendment.

Thus, both our rules and the general practice are clear that this amendment of Senator Gill's, seconded by Senator Watt, is not

capable of amendment. I think the reasoning would be fairly clear: In effect, it kills the bill. To revert to a motion that would end deliberation on the bill is not consistent with what is before the chamber at this time..

Therefore, I rule that the motion is not in order.

**Senator Kinsella:** Honourable senators, I rise to participate in the debate on the matters before us, in particular the motion of Senator Gill.

Not only am I pleased to associate myself with Senator Gill on this motion, I am pleased to associate myself with he and his colleague, Senator Watt, on their position on the main motion.

Honourable senators, in particular, my friends opposite will recall that in the 1993 Liberal Red Book there was a promise to establish an independent claims commission to resolve certain types of disputes between the government and First Nations. We are speaking about a commitment that the Chrétien Liberals made in writing in their 1993 Red Book.

Senator Watt seems to be suggesting in the way he wanted to have clarification brought to the motion of Senator Gill that under a Paul Martin Liberal government there may be a better chance of having that Liberal Red Book promise brought to fruition.

• (1900)

Therefore, in the political context, it makes eminent sense to support the motion in amendment of Senator Gill because it will afford my friends opposite the opportunity to fulfil a Red Book promise that Senator Watt is telling us prime minister-to-be Paul Martin would deliver on. I do not even sit on the other side, yet, but we are going through our own process of discernment on our side, as I mentioned during Senators' Statements.

In any event, this is something we should reflect upon. His Honour said a few moments ago that if we do this, the bill is dead. Why is it dead? It does not have to be dead at all. Much work has been done. It is being argued that we should do this right. Let us do what the Red Book promised; let us do what Senator Watt is convinced that prime minister-to-be Martin will do.

Therefore, honourable senators, I hope we will receive a lot of support from Liberal senators when this question is finally called for a vote.

In 1998, a joint task force report from the government and First Nations also concluded that a claims commission should be independent and not controlled by the government. We have heard a lot of debate on that very specific topic and very good argumentations adduced around it. However, based upon what we have heard, I find myself unable to draw any implication other than that in Bill C-6 the government has broken its promise to have a truly independent claims commission. In committee, the government seemed not to want to see amendments that would have brought a significant degree of independence to the commission.



It is hard to understand, first, why the government would not support a proposal to do what it had promised in the Red Book to do and, second, to do particularly what the Assembly of First Nations is advocating, given the very special position that the Assembly of First Nations occupies in our political landscape.

The Assembly of First Nations is very clear that they want to see the development of an independent claims body. This was the position of many of the witnesses that appeared before our Standing Senate Committee on Aboriginal Peoples. I think we all would want to see developed a truly fair, efficient and effective independent claims body. Unfortunately, the reality is that Bill C-6 does not accomplish these objectives. As a result, it is not too late, in my view, for the current Government of Canada to show real leadership, withdraw this legislation and return to a joint table with First Nations. If there is desire by the current government and its leader to have a legacy of real leadership in matters relating to the First Nations peoples, here is an opportunity, at the sunset of the Chrétien government's time, to do something right for the First Nations peoples of Canada and withdraw this bill. All is not lost.

As Senator Watt has told us, we can use this opportunity to reflect on the work that has been done and allow a Martin government to complete the work and fulfil the promise that was made in the Red Book.

Senator Gill's motion in amendment that is currently before us is not to delay this bill for the sake of delaying it but to set it aside, so that a fresher mind, a new team of Liberals, will address this Red Book promise and bring into Parliament a bill that will do the kinds of things that Bill C-6, unfortunately, does not deliver on.

I, therefore, encourage my friends opposite, when the time comes to vote on this matter, to vote in support of the amendment to the motion, moved by Senator Gill. Let us give the new Liberal regime, the dawn of which is not too far away, the opportunity to show real leadership.

Perhaps this could be raised at the caucus of the new leadership to be held tomorrow night. You might give yourself some time to have this discussion in the Martin caucus.

[Translation]

**Hon. Pierre Claude Nolin:** Honourable senators, could it be that there is good faith on both sides?

The government, one must assume, is acting in good faith. We have heard several of our colleagues set out arguments as to why we should support this bill. Most of us who are not familiar with the reality of Aboriginal affairs are somewhat troubled.

On the one hand, we have a group of individuals acting in good faith telling us that this is a good first step. We have been looking for a solution for 45 years. This is not perfect, but it is a step in the right direction.

On the other hand, the elected National Chief of the Assembly of First Nations has told us that the First Nations and government officials have agreed in good faith to participate in a joint reflection process to try and resolve a problem that has gone on for too long.

He said so in a letter, which was laid upon the table and read to us today by Senator Lynch-Staunton.

It is possible that, on both sides, everyone is acting in good faith. On the one hand, the government is convinced it is making a worthwhile effort, a step in the right direction while recognizing that this is but a step, but one made in good faith.

On the other hand, a group of Canadians properly represented by a new chief is telling us that they have participated in the process, but that the solution they have been presented with does not resolve the problem completely and they would like to examine it further.

Senator Gill is the sponsor of this request. He is not asking for much. Naturally, even if the bill were passed, no one will go on the warpath, so to speak. Once again, we have an opportunity to show the First Nations that increasingly, in spite of the ups and downs of history, we are acknowledging our mistakes and, once in a while, we are actually thinking of their best interests and acting accordingly.

• (1910)

Honourable senators — Senator LaPierre will correct me if my history is incorrect — the kings and queens of whatever period, who ruled our lands for almost 470 years, the governors who acted — not all, but most of them — on behalf of these kings and queens, the governments that followed and that assumed this sovereignty misled — to call the kettle black — those peoples who have lived here for over 40,000 years. They misled them, lied to them, raped their women and deported them whenever it satisfied their need to have this sovereignty recognized.

I come from Iqaluit. I understand that the bill before us concerns the First Nations, but the Inuit communities were deported to satisfy this need for sovereignty. Chief Fontaine is not asking us for much in saying: "Give me time to digest this measure, to understand it, and raise some public awareness and to tell them what this good faith means, but help me help you." That is what Chief Fontaine is asking us to do. We are saying that we do not believe in him or trust him, we are saying: "We know what is good for you; listen to us." Those people are telling us that they are prepared to go through our legal system, but they feel as if it is a crapshoot. This system is not completely independent.

Both sides are acting in good faith. They are seeking a viable solution. Yes, this problem has existed for too long. The days when those people could be tricked by the strongest and the richest are over. They are asking us to create an impartial and independent system, and they are questioning the independence of the present system. I think we can grant them six months to raise public awareness in a community that is willing to do this by our rules.

That is why I will vote in favour of Senator Gill's amendment. I implore you, honourable senators, to do the same.

**Senator Corbin:** Honourable senators, my position vis-à-vis this bill is well known. This is not the first time that I have had to vote on a bill in Parliament with respect to Aboriginals. This bill affects their rights, their lifestyle and their hope for a better future. I have been in Parliament for over 36 years and from one vote to the next, I have been naïve enough to hope that finally the day would come when these issues would be resolved.

I remember after my first election — two days after the election — the first meeting I attended was a meeting, in Moncton, of chiefs of native reserves in the Maritimes. I crossed the province and went to the meeting. They were told that things would change and I was naïve enough to think that things would change for the better, in their favour. In 36 years there may have been some improvements and progress on the negotiations front, but there have also been setbacks and that is part of our history.

As Senator St. Germain was saying earlier — and he knows Western Canada much better than I do, as I have only stayed there occasionally as a tourist — it is true that the situation for Aboriginals and the Metis in major cities in the West is deplorable and is becoming increasingly serious. He put his finger on the problem when he was talking about it earlier this evening. The problem continues because as long as both Houses of Parliament do not take full and complete responsibility and tell the government of the day that it is not doing enough, that it is not going as far as it could, that it is not negotiating in good faith, and that it continues to exert its paternalism on the country's first citizens, then there is not much hope for the future.

Honourable senators, I would have liked to leave political life one day soon with the pride of being able to look back and say that, finally, the claims of this country's Aboriginals have been treated with complete justice after all this time. It is with no light heart that I am voting against the government's proposal. I am doing so because I believe in certain principles of justice for all in a democratic country.

Senator Austin was telling us a while ago that he was proud that certain provisions had been included in the Constitution Act aimed at maintaining and safeguarding certain rights of the Aboriginal peoples and Metis. I was part of that committee, chaired at one time by Senator Joyal, and co-chaired by his Honour's father. I missed only one meeting of that committee and that was because of a snowstorm. When travelling along the St. Lawrence River in early January, there were only two choices: stay in the snow bank or go back home; it was impossible to go forward.

Honourable senators, even during the constitutional process, great hopes were raised. They were partially fulfilled; I am not totally negative tonight. I sincerely believe that, since then, things could have been done better and faster. I share the opinion of a number of my colleagues that the Department of Indian Affairs does not always act in good faith. I have dealt with the Department of Indian Affairs; I have intervened on behalf of

Aboriginal constituents. I can tell you that the department is all tied up in red tape, and the lights never come on. There was always a good argument somewhere in the regulations for the department being unable to satisfy the legitimate claims of the people whom I was helping. Many of you have lived with this kind of frustration.

This is not the first time I have risen to stand beside my colleagues who represent the Aboriginal people. I have voted and abstained from voting on government bills, to show my support; I am on their side. I would like to invite more of our honourable colleagues to rise and support their legitimate claims.

• (1920)

From now on, God willing, I will always vote with my Aboriginal colleagues on each and every issue that will show the government and the Department of Indian Affairs just how utterly dissatisfied I am.

**Hon. Marcel Prud'homme:** Honourable senators, we often hear people say they had not intended to take part in a debate, and then they go on and on. I am going to do the opposite. I did not have the intention of taking part, and I think that the votes I have cast will be the best possible way of expressing myself under the circumstances.

I have a lot of questions. I will shortly be celebrating my 40th anniversary in the Parliament of Canada. I am therefore the most senior Parliamentarian, not necessarily in age, but in seniority. The Right Honourable Jean Chrétien is the longest serving in the House of Commons, and our friend and colleague Senator Lawson in the Senate, but I am the longest serving in both Houses.

When I was appointed to the Senate ten years ago, I knew the Senate played a different role from that of the House of Commons. I understood that. My professors at university understood that and taught me well.

The Senate is the chamber of sober second thought, the place where the necessary time is taken, the place governed by the maxim that order excludes haste and precipitation, a place that is independent of the rapid changes in public opinion, independent of the hordes that pursue us as if we in the Senate were incapable on our own of reflection on our country. It has almost become a waste of time.

[English]

I think it is almost a waste of time. I have often changed my vote after listening to colleagues. That is why I am always here. I do not talk about those who are absent or are indifferent. Each one of us must judge for herself or himself, but that is why I participate in the debate. I am not ashamed to say that I have often changed my opinion. I came in with an opinion. I always have an opinion, very much like most senators, but I am always ready to listen to other opinions and not ashamed to change my opinion.



## [Translation]

I find it odd that, every time we talk about the Acadians, for whom I have very loving and friendly feelings, we seem to be more sensitive. I am not saying that we are. It must be painful to some to be reminded of the deportation of the Acadians, to hear about it and see those events celebrated. The Senate has no hesitation because we know that a people has been wronged.

I am a French Canadian nationalist from Quebec and a federalist. My differences with my friends in the Bloc Québécois and the Parti Québécois stem from that. I am not ashamed to say that I am a nationalist. My nationalism stops perhaps where that of Senator Cools begins. My pride always stops where the pride of others begins. Mine is a sound nationalism, as opposed to a narrow one.

Honourable senators, we must have a sense of history. Well before my ancestors settled in Canada, there were people living here. For 20 years, I travelled across the country defending all these great policies.

## [English]

The two founding nations: I was so proud of that until I arrived at the Château Frontenac in Quebec City in 1970, with our beloved Speaker Senator Molgat, to speak in front of over 1,500 people. I stood up and said, "We, the two founding races..." A big, tall man got up and said, "Too bad that tomorrow we can only read and not hear the sounds 'ha, ha, ha'." It was Max Gros-Louis, Grand Chief of the Huron-Wendat Nation. He shamed me, but I liked him. He was a good friend. I started to think that he had a point.

My ancestors came in the 1600s. They displaced some people, and they made alliances with some people. That is why we have less difficulty in Quebec — not because we are nicer, but because we have had a longer association. We are slowly coming to terms with our 11 nations. In case honourable senators do not know, there are 11 nations in Quebec. We are coming to terms with most of them because of our long association with them. I say to you, especially those who live in British Columbia, good luck, because your association with the First Nations is more recent. If you do not have the sensitivity to understand, you will have big problems.

I listened to Senator Austin's speech. To my surprise, it was very affirmative and decisive, but it is a speech that worries me, especially with the rumours that he may eventually be our leader in the Senate. "It is my way or the doorway." That is not my style and that is not the style that should exist in the Senate.

These are only the reflections of an old man at the end of the day, after an exhausting weekend in Montreal attending other business and public affairs and family affairs. I do not think the Senate is playing its true role. It is highly disappointing for an old man like me who strongly believes that the Senate has a role to play.

Do not touch others without understanding them. Understand the First Nations. Do not touch someone because of their religion. If someone is a proud Canadian and of Jewish faith, you had better respect them in front of me; otherwise, there will be quite an argument. Yet, this is not the reputation that some people unfortunately keep repeating to some new senators. Someone just told me this afternoon, "It is unbelievable what people say about you. I did not know you because you do not look like the person who was described to me."

Find out for yourselves. Find out what role you can play. Except for one, two or three senators I see here who are in their fifties, most of us are a bit older than that. Could we be proud to return to our grandchildren? In my case, I have many nieces and nephews and great grandnieces and great grandnephews. I do not have any children that I know of, and I regret it in case someone wants to smile, and you can smile if you want to. We must go back to them and say, "Here is what I can do. Here is what the Senate can do."

• (1930)

Some senators here, as an example, have been around the world. When I make speeches, every one of you inspires me for a story or an event. I will not mention names, so as not to personalize the debate, but I am referring to the inter-parliamentary union. We talk to people about democracy, and they ask us how we are elected. It is very difficult for senators, who are appointed, to talk about democracy and elections in countries where the people do not even know where their next pint of milk will come from.

I hope the new senators will ask themselves, as I do every day, whether they can be proud to have played a role in the Senate, or are they just followers of whips and governments and prime ministers? If that is the case, why do we have a Senate? When people feel as strongly as has been expressed by Senator Gill, Senator Watt, and Senator Adams — I prefer to choose these three, even though I am a good neighbour of Senator St. Germain, which is another matter — it is my duty to listen to them. In that way, Marcel Prud'homme can play a role, teach and preach to the rest of the world to look at us in Canada. We have two Houses, one that gives in rapidly under pressure, which is the elected House. I was elected 10 times — chosen 10 times as a Liberal — and then I came to the Senate. I know sometimes that we make decisions under pressure. That is why the Fathers of Confederation saw fit to have a second chamber where, without modernizing it too much, they could play a role. Every proposal of reform of the Senate can be challenged. I shall do it in due time, across Canada, as quietly as I am obliged to do now, not as I used to do.

If Canadians knew the role we could play, they would defend the Senate before defending the House of Commons. However, we have to play our role. I call on the new senators to play their roles as senators. Each of you has a duty to the country and a duty to Canadians not to be pushed around, not to do things that you think may not be exactly right, but to first remember the *raison d'être* of the Senate, which is to listen to those who may not be great in number, to listen to those who may have a different point of view, who are called minority and may come from a different background from yours. That is very important.

There are people here who are very happy in the Senate. I do not blame anyone who is unilingual English, but on occasion when French is being spoken they do not even put their earpieces on. In that situation, I know I am talking to the wall. That hurts, and it is sad because you know that all your effort is worth nothing and that you are talking to the converted.

Today, we witnessed a magnificent example of an open mind, that of our new senator, Senator Trenholme Counsell. I want to use Senator Trenholme Counsell as an example.

[Translation]

She is not a French-speaking senator like myself or Senator Ringuette-Maltais, Senator Bacon or Senator Joyal. What a remarkable tribute she paid to Senator Louis J. Robichaud! She could have done so in English, her mother tongue. She did a dazzling job of it. She demonstrated that she is sensitive to another person, a colleague, someone she knew. How great it was to pay tribute to Louis J. Robichaud, as she did, in the language he always strived to defend! Doing it only in English would not have made her testimony any less valuable, but the truth is that I was impressed. Wonderful things can happen in the Senate.

[English]

It may seem very small to some honourable senators, but for a sensitive man like me it is not small. It shows she has a sensitivity to understand what the Senate is all about, which is to care for people who are in the minority.

I will conclude by saying that you may think it is easy. Do you think it is easy? I am talking here to people who can work, play and make money only in English, and I am also talking to French Canadians, because sometimes I believe that bilingualism is for French Canadians. However, do you think it is easy for Senator Adams to express his feelings in a language that is not his? Because he has greater difficulty speaking the English language, he probably participates less in the deliberations of the Senate. That is why we should listen more attentively to him, because he is not as comfortable speaking in English as most honourable senators here.

I will contribute to the debate by describing what happened to me years ago, during the conferences across Canada, in an effort to save Charlottetown. In Vancouver, where I was really in good shape, I tried to explain what Canada was all about. A young man from Saskatchewan, whom Senator Merchant knows, admonished me in English. I was expressing the pride of the Canadien-français. For three days, I kept my cool, but I was about to lose it when a very fine old lady raised her hand. She was an Indian leader. She said she wanted to speak, and I thought I could take it from anyone but not from the First Nations, so I was ready to be hit. She said, "I understand the pride of this man, Marcel Prud'homme, in his desire to save his language and his culture. My only annoyance with you, young man, is that I, Indian leader, woman, have to express my pride in English

[ Senator Prud'homme ]

because I lost my language." Therefore, honourable senators, I understand the people who are attached to their culture in the Senate, which is the best place for reflection before we hurry things too much.

• (1940)

**Senator LaPierre:** It is indeed difficult to do what I am about to do and, in the process, I do not deny anything in my past that I have done. I have sat here and been profoundly hurt by the sermons that I have heard over and over again. I have been profoundly hurt that I have been associated with all crimes that may have been committed and have been committed against the First Nations of my country. I have sat here and have been led to believe that if I vote against this resolution of Senator Gill and accept the government's position, then I am betraying my past, my future and any form of decency I may have.

I deplore that, honourable senators. I had been led to believe that this chamber is a sacred place in which this kind of attitude does not prevail.

[Translation]

Motives should not be imputed, as they have been since the beginning of this debate.

[English]

The other day I watched Senator Sibbeston being attacked vociferously and with a baseness that I have not seen in many years. No doubt the debate leads to these kinds of attitudes. I approached Bill C-6 with the understanding in my heart that I would vote against it. For the past several months I have reflected on that and reached the conclusion that because I am a child of the enlightenment and believe in the inevitable perfection of human beings, the bill meets a needed condition — an independent resolution of First Nations specific claims. I asked myself why this bill could not be a new departure so that men and women of goodwill, instead of bashing each other on the head, would be able to continue to consider this bill and perfect it as the years go on. No law is ever written in stone. I am told that the next leader of the Liberal Party would do a better job. All right, let him amend the bill. At least a statement will have been made that this right to an independent tribunal for specific claims exists and must be present. The principle of this bill is just that and nothing else. Consequently, it must be accepted by Parliament so that we can move on and, in time, repair the necessary elements of the bill in accordance with the brilliant testimony of Senator Watt, Senator Adams and Senator Gill.

I will vote against the position of Senator Gill, which is painful to do because I respect him more than I respect almost anyone else on this planet. I will vote in favour of the government because I believe that there should be a new departure. I am tired of feeling guilty that, since 1653, my people have done nothing but assault the native people. I had nothing to do with that. Sometimes I feel like Margaret Mead or the great American James Baldwin, who accused her, in a dialogue they had on



television before most of you were born, of every conceivable crime about the White man and the poverty of the Black people, et cetera. She said that she was not responsible but that she cared that it would never happen again. She said that here must be a departure of understanding of the heart in order to bring people together to a resolution and an affirmation. Thank you for your observation, madam.

At the end of the day, we have to begin somewhere, and that may be in this chamber today by accepting Bill C-6. In that way, we will build upon the new departure and the day will come when we will never again have a debate such as this one — never, never again. The children of our country, the founders of our country and the first inhabitants of our country will live in the full glory of the rights and promises of their future.

**Senator Watt:** Perhaps I should put it in the form of a question, but I would like to respond instead with a comment to Senator LaPierre.

**The Hon. the Speaker:** Senator LaPierre, will you permit a comment from Senator Watt?

**Senator LaPierre:** Yes, this is a free place and he can do what he wants.

**Senator Lynch-Staunton:** Order.

**Senator Cools:** We believe in debate.

**Senator Watt:** Honourable senators, I will try to be sensitive to what I heard, but it will not be easy.

Honourable senators, we are not here to personalize the matters with which we are dealing. The Senate is not the right place for that. If I wanted to personalize the matter I could easily do that. However, I stay away from that as much as possible. The bill deserves to be dealt with on its own merits and that is what we are trying to do.

Honourable senators, we have said over and over again, and it is true, that this bill is not acceptable to the Aboriginal people and that it will not work to the advantage of the Aboriginal people or of the Government of Canada.

I appreciate that honourable senators have indicated their feelings, opinions and experiences. However, we Aboriginals in the Senate are not here to sensitize you to the point where you have to feel guilty. We are not attacking individual senators and we never will.

Rather we are talking about Bill C-6 and a system that does not work. We have been saying loudly that the system is not working and must be fixed. The way we are dealing with it, on a piecemeal basis, will not fix the problem. We have to keep the debate at that level and not personalize the matter or we will never get out of here.

Honourable senators, we have dealt with this issue in depth, which I appreciate, but I do not want anyone to feel that they are being personally attacked. We are not attacking anyone. We are only doing our job. If we do not say what we have to say, we would not be representing our people. Whether you like it, you have to hear what we have to say. This is our responsibility and this is why we are here. We will continue to maintain that responsibility. I have hope that one day we will break through and have more Aboriginal senators in this place. I would like to see those numbers increase. I would like to see Aboriginal women become senators so that honourable senators could hear their points of view and those of the children. Much of what we currently hear in this chamber is second-hand information.

• (1950)

Honourable senators, we ask only that you let us use this instrument, which is accessible to all of us, to the benefit of our people — that is, Aboriginal people, non-Aboriginal people, the country and Canada. Let us maintain it in that level. Thank you.

**Senator Cools:** Honourable senators, I have been sitting quietly and reflecting, but I must tell honourable senators I feel it is my bounden duty every now and again to give my Aboriginal brothers a hand. I was abundantly clear that I was not involved in the substantive questions of the bill, but I should like to say, honourable senators, that I was wanting to ask Senator Prud'homme a question.

Senator Prud'homme has had the distinct advantage of having served many prime ministers, having served in both chambers — and, quite frankly, having served as a Liberal — and having a long and distinguished service. Senator Prud'homme is very well known for his support of difficult questions, particularly his support of the Palestinian people, and he is held in wide respect across this country.

As I was listening to Senator Prud'homme — and I listen to everyone here talk about their racial collective consciousness and I let a lot of that pass by because I do not talk about mine. If we were to introduce some of those debates, then you would really see the temperatures rise. However, as I was listening to Senators Prud'homme and Watt, I was reminded of something I have not looked at for a while that is, George Grant's *Lament For a Nation*. I do not know what others think of George Grant's book, but I was reflecting on that because what I was hearing in Senator Prud'homme's intervention was a lament for the Senate, and a lament for Parliament, and a lament for the fact that these institutions, the highest achievement of constitutionalism — the Parliament of Canada...

**The Hon. the Speaker:** Senator Robichaud, point of order.

[Translation]

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I am confused about what we are discussing. Are we on a question to the previous speaker, on a comment or on a speech? Forgive my ignorance, but I have lost track of the debate.

[English]

**The Hon. the Speaker:** Senator Cools is speaking to the bill and has not spoken before, although we did not hear from her on points of order and other questions.

**Senator Cools:** I would have thought it was crystal clear that I was on the main question, because the Speaker ruled a little while ago, at the prompting of many here, that there could be only one question before the Senate. Therefore, I thought it was pretty clear to all that I am speaking on the motion, because it has not been voted on yet, so it is still before us.

The point that Senator Robichaud spurs me on to want to make is that this Senate has a bounden duty to act as an independent chamber with an independent opinion. It has a bounden duty and a constitutional responsibility to review every bill that is put before it, and to question the government in as strong as possible terms — that is what we are supposed to do.

There are many senators and members of Parliament who think they are supposed to do something different from that, but let me inform them that they are wrong. The proper role of Parliament and the Senate is a very jealous relationship. There is supposed to be a very jealous relationship with the government, and we are supposed to seek to uncover that which is wrong with every bill. That is very clearly, to my mind, what Senators Watt and Gill have been trying to do.

Honourable senators, Senator Prud'homme talked a lot about sensitivity. I view myself as being an extremely sensitive person. I also believe that Senators Watt and Gill have been extremely sensitive. They have handled a very delicate situation with what I would consider to be a high degree of magnanimity, eloquence and elegance. I think many of us here feel an enormous debt.

Let me say, in closing that, because of my own background, I do not know that much about native people. I have not had much contact in my life with native peoples. As honourable senators all know, I was born in the British Caribbean, and the native peoples there — the Caribs, and the Arawaks from the island of Barbados — would have disappeared a long time ago except, I think, on one or two islands where there are reserves. Nevertheless, I hope this particular bill, this particular study and this particular coercive action of force called a time allocation is the last occasion this chamber will see a bill proceed in this way.

Honourable senators, I am not one given to confessions and great expression of tears and drama on the chamber floor. It is not my style; I do not think it is appropriate behaviour. However, it must be very painful and very difficult for these gentlemen

senators, members of the Aboriginal races, non-white, to stand before this chamber hour after hour, day after day, minute after minute pleading with senators to give them a hearing. It must be very, very difficult. If you see me help them occasionally on a procedural fine point, it is because I sincerely do believe that these gentlemen are operating from a position of deep conviction — that they are attempting to advance the conditions of their own people.

I know there are large numbers from the Aboriginal community in the gallery this evening. I want to ask them to listen carefully and do not misunderstand. At times, what they have been hearing on this floor sounds very cruel insensitive, but I would ask them to bear in mind that out of this disagreement the future will move ahead. What has been said is now a part of the record. Senators Gill and Watt have taken very strong positions and, while they may not win this battle, at the end of the day I can promise that they are going to win the war.

We are in a state of constitutional confusion in today's community, where the two institutions of Parliament are not being allowed to function as institutions of Parliament. Maybe I am naive — and I must be very overbearing to so many people here to be constantly raising this principle and that principle, and that concept and the other concept — but believe you me, honourable senators, at the end of the day, this debate and this Parliament is the best that we have.

• (2000)

I know that when Aboriginal individuals such as yourselves listen to these debates, the gnawing thought comes into your minds: "There goes those White people again. There goes those White people again not understanding us, not listening to us, deaf to us, not hearing, not feeling." I just want you to know that those are thoughts to be put far away from your minds. Deal with the situation for what it is. As Senator Watt so ably said, this is not personal. It is not a personal attack on any one senator. Please take all of this in a context that within all the limitations here some people are actually trying to do their very best.

Today, I felt strange for a few moments. Why is it historically that the only three senators really carrying this torch happen to be non-White? How could it be? Can it be an accident? We all know that I never talk about race. However, I can tell all honourable senators that I come from centuries of miscegenation. People talk about oppression, and so on. The subject matter of slavery is one on which I have done a great deal of reading.

I am descended of people — and I do not think there are two senators in this chamber who know anything about this — who were called free-coloured people. I want honourable senators to know there was a system called manumission. Remember, slavery was an estate in human flesh. The system of manumission meant that accomplished slaves could buy their way out by manumitting.



For anyone who is sitting here feeling a little uncomfortable that these racial questions have raised their head, in the year 1790, for example, on the Island of Jamaica there were 10,000 of these free-coloured people. The jealousy that group of people used to attract was so enormous that at one point they wanted to tax the phenomenon of manumission. Fines of £500 were imposed. On one island the price of manumission went to £1,000 — so insistent were the powers that be to prevent miscegenation of the races. Those people who were manumitted, the free-coloured people, would quickly become the leaders in the community because of their natural talents.

I do not talk about this often because it may be sentimental, emotional and passionate. As well, it quite often does not advance debate.

I did not want to let the moment go by without letting the Aboriginal individuals in the gallery understand that there are large numbers of senators here who respect and honour the work of Senators Watt and Gill. This exchange is to be viewed as what it is. It is a debate.

At the same time, I have to thank Senator Prud'homme and say that I think his concerns are well-placed. When there is a new leader in the next month, hopefully, dear God, these institutions will be allowed to function as institutions of Parliament are supposed to function. What has happened in the system is that members of both Houses are habituated to the situation as it is.

Whatever it is, whether or not it is sentiment, the fact of the matter is that the debate is winding down. The question will be put. The main question will then be put. It will then be all over. It will be another battle for another day.

I wanted to say that to Senator Prud'homme because he has been around for a long time. I have been around a little while, but not quite as long as you. It is very important that you share those experiences.

I am also of the opinion that Canadians are now beginning to understand a bit about the native and Aboriginal questions. They are now beginning to understand just like the world a couple of years ago began to understand that there was —

**The Hon. the Speaker:** Senator Cools, I am sorry to advise you that your time has expired.

**Senator Kinsella:** Ask for leave.

**Senator Cools:** No. It is over. We are fine now. The point has been made.

**Senator Kinsella:** Did you ask for leave?

**Senator Cools:** What?

**Senator Kinsella:** Did you ask for leave?

**Senator Cools:** Oh, yes. Can I have leave?

**The Hon. the Speaker:** No other senator rising to speak —

**Senator Kinsella:** Do I have time to ask the honourable senator a question?

**The Hon. the Speaker:** No, her time has expired. She did not ask for leave.

**Senator Cools:** Do you want me to ask? I thought it was in jest.

**The Hon. the Speaker:** Are you asking for leave to continue, Senator Cools?

**Senator Cools:** I was treating it as —

**The Hon. the Speaker:** Senator Cools has asked for leave to continue. Honourable senators, is leave granted?

**Some Hon. Senators:** No.

**The Hon. the Speaker:** I am sorry, Senator Cools, leave is not granted.

I am looking to see if there is another senator who wishes to speak. As we all know, we are operating under a time allocation order of this chamber. If no other senator wishes to speak, it is my duty to put the question.

I see no other senator rising.

Does the Honourable Senator Joyal wish to speak?

**Hon. Serge Joyal:** Honourable senators, as Cicero said, sometimes patience is a virtue that is easily spent, but I beg your indulgence for 10 minutes more.

This bill is fundamentally important because it is a constitutional bill. It is not like many other bills that we debate in this chamber. It is a bill that essentially addresses itself to section 35 of the Constitution and to the fiduciary responsibility of the Crown.

That fiduciary responsibility places us as government and as legislators in an awkward position. We are at the same time judge and a party to the action. We are judges because we have the responsibility for Indian matters under section 91.24. We are a party to the action because we are trustees of the Aboriginal people dating back to 1763.

Therefore, when there is an Aboriginal issue that relates to the Constitution, we are in a contradictory position. We have to adjudicate and, at the same time, we have to speak on behalf of the Aboriginal people. The mechanism that Bill C-6 would put in place is a mechanism or a system that should be able to solve more than 600 land claims. When we deal with lands in relation to Aboriginal people, we are not talking about the lands which non-Aboriginal people think about. We are talking about the constitutional rights of Aboriginal peoples to their lands. In other words, their lands are protected by the Constitution.

The Department of Indian Affairs and the Department of Justice laboured to produce a joint report in 1998, which was referred to by Senator Austin. The Supreme Court of Canada in *Delgamuukw* established the criteria that we have to follow when we are addressing the land claims issue of Aboriginal people.

In paragraph 168 of the court's voluminous decision, it is stated that when we deal with land claims, we have to consult the Aboriginal people.

• (2010)

"We" refers to the Crown consulting Aboriginal people, but it does not suffice only to get their views. We have to come to terms with the conflicting views in order to resolve the claims.

In this bill, we have a proposal to establish a tribunal. A tribunal is a court of justice; it is an independent body. This independent body, according to any legal advisers, must satisfy three criteria. First, it must be financially secure. In other words, it should not depend on a third party for its supply of money in order to function. Second, the members of that tribunal must have security of tenure, which means that they must remain there for a long period of time, to be immune to undue influence. In other words, they must not make popular decisions to please the person who has the authority to appoint. We can understand that easily. Third, the tribunal must have institutional autonomy. In other words, it must rule its affairs totally outside any kind of influence. Those are the three criteria for an independent tribunal.

What is at stake in this bill? In this bill is essentially the constitutional duty to establish a system of adjudication that meets those criteria so that those who go to the court will have the assurance that their claims will be dealt with properly.

When we apply those three criteria to the bill in question, there are some issues pending. One is that the judges are appointed for five years and that they might be reappointed to that or any other position. That is found in clause 41(7) of the bill. This raises the issue that a person might adjudicate on the basis of an expectation of being reappointed to that position or to another position.

That is a very important element because administrative tribunals such as the one contemplated in this bill are presently the object of an investigation by former Chief Justice Antonio Lamer. His report, expected in December, will analyze the various norms that administrative tribunals must satisfy in order to continue to adjudicate properly, to maintain not only justice but also the appearance of justice.

There are other aspects of this bill that raise problems with regard to institutional autonomy. The bill says, in various aspects, that its people are assimilated to public service. They do not have the autonomy that court personnel should have to remain outside influence.

In terms of financial autonomy, Treasury Board defines the scale of salaries. This is problematic, too. As you know, there has been a decision of the Supreme Court in relation to payment of

salaries to judges, and the court has established very stringent criteria. We have had to deal with those problems here.

There are two aspects that we must reconcile in this bill. We must reconcile our duty to ensure that when we act as fiduciaries of the Aboriginal people we are not putting ourselves in a conflict of interest position, that is, adjudicating more for non-Aboriginal people than for Aboriginal people. At the same time, we are the ones who will have to foot the bill. Hence, the system contemplated in the bill is a very delicate balance between those two conflicting objectives. The mechanism put into place by this bill raises serious questions. We must be sure that this bill will meet the test of the court.

As Chief Fontaine said in his letter to us, Bill C-6 raises legal and constitutional issues, but he did not elaborate on those. When I read the letter, following the speech of Senator Gill two weeks ago, I began to question myself about which aspects of the bill might be problematic.

Honourable senators, this is a very important issue. The way we address the system in this bill will have an impact on the resolution of the issue presented by our colleague Senator Chalifoux in relation to the Metis people, because exactly the same principles apply in relation to the Metis as apply in to status Indians. It is very important that, throughout of all the emotion and all the tension raised in this discussion, we keep that in mind, because once we have taken a decision on this bill, as one would say in French —

[Translation]

Our actions will follow us. The representatives of First Nations who will read our debates, the judges who will need to consider the substance of this legislation, independently of the emotion we have brought to this debate, will read the legislation as passed. Their judgment will be based on the text itself and not solely on the very generous intentions that seek to make serious reparations for the past, as our honourable colleague, Senator LaPierre, wanted to mention and with which we all agree.

But when the courts are called upon to test the constitutionality of this bill, they must be satisfied that it perfectly reconciles the joint committee's objectives.

[English]

That joint committee had representatives from the Department of Justice and Indian and Northern Affairs Canada, as well representatives of the Aboriginal people. I read it during our recent recess. It was quite clear that the objective was to establish an independent mechanism to solve the 600 pending claims so that both parties could trust the tribunal or the court system that was put into place. Since it was a court system, there was no doubt that they were creating a very high level of demands over the satisfaction of legal norms that normally apply to a court system.

Honourable senators, read clauses 41 to 70 and you will realize that this is a real court of justice that is being proposed.



• (2020)

A court, in evaluating the reliability of that system, will apply the norms that are usually operational in a court system. This is important because that guarantees that the Aboriginal people will get real satisfaction. If they are not convinced of that, what will happen? All our debates will be for nothing. All of the hours and the long sessions that the Aboriginal Affairs Committee, under the chairmanship of Senator Chalifoux, and the time that other senators will have spent on this bill will be to no avail because the system will not be trustworthy.

We have the heavy responsibility to convince ourselves that this bill satisfies those criteria. I am sure that, in so doing, we are helping the Aboriginal people to come to terms with that typically Canadian problem of unsolved and pending Aboriginal issues that exist for centuries and to develop a new approach that we would like to have as equals.

Honourable senators, it was mentioned earlier this afternoon that the First Nations are not referred to in this bill. First Nations are mentioned in this bill. Clause 45(2) of the bill states that the rules that the tribunal will adopt will be published in the *First Nations Gazette* or a similar publication. In other words, the bill recognizes the status of the First Nations. The *First Nations Gazette* has been the proper vehicle to publish the rules of the court. There is no doubt that if we do not reconcile the trust of the First Nations people in the system we are putting in place, we will not solve the conundrum that we have found ourselves in for centuries.

**Hon. Gérard-A. Beaudoin:** Honourable senators, I agree entirely with the three principles explained by Senator Joyal. The *Valente* case is clear. That case speaks to independence, financial independence, "inamovibilité" of judges and institutional independence.

The reason I have voted with my colleagues is that justice, as is stated in the *Sussex* case of 1924, should not only be done, it should be seen to be done. That British decision is quite applicable in our country.

Since we have a fiduciary duty toward Aboriginal nations, and since justice should not only be done but should be seen to be done, we should respect the amendment proposed by the Aboriginal nations. That is enough for me because there may be a doubt for them. Perhaps they are not satisfied with the way we addressed this issue. Perhaps they need some time to think about the subject.

We have administrative tribunals, but there is always a right of appeal. The right of appeal is fundamental. In regard to the right to appeal of a decision of an administrative tribunal, it is not the name that is important; it is the duty that is devoted to the tribunal.

I have spoken enough. I have reacted as a jurist, but laws have to respect the rule of law. I will vote as I did the first time because justice should be seen to be done and we have a fiduciary duty toward Aboriginals. That is enough for me and for my vote.

**The Hon. the Speaker:** Honourable senators, I rise again as your presiding officer with respect to a step I must take now if no senator wishes to speak. Pursuant to the order of this place regarding time allocation, I must put the question with respect to Bill C-6. No senator rising, I will do so.

We begin with the amendment proposed by Senator Gill. I will put it in a formal way. It was moved by the Honourable Senator Gill, seconded by the Honourable Senator Watt, that Bill C-6 be not now read the third time, but that it be read a third time this day six months hence.

Will those honourable senators in favour of the motion in amendment please say "yea"?

**Some Hon. Senators:** Yea.

**The Hon. the Speaker:** Will those honourable senators opposed to the motion in amendment please say "nay"?

**Some Hon. Senators:** Nay.

**The Hon. the Speaker:** In my opinion, the "nays" have it.

*And two honourable senators having risen:*

**The Hon. the Speaker:** Call in the senators.

**Senator Kinsella:** Honourable senators, I believe the rules provide that the vote is automatically deferred to 5:30 tomorrow afternoon.

**The Hon. the Speaker:** The rules provide that the vote be deferred on the request of either whip. Are you so requesting, Senator Rompkey?

**Hon. Bill Rompkey:** Yes I am, Your Honour.

**The Hon. the Speaker:** At the request of the whip on the government side, the vote will be held at 5:30 p.m. tomorrow, with a 15-minute bell.

[Translation]

## CANADIAN FORCES SUPERANNUATION ACT

### BILL TO AMEND—FIRST READING

**The Hon. the Speaker** informed the Senate that a message had been received from the House of Commons with Bill C-37, to amend Canadian Forces Superannuation Act and to make consequential amendments to other Acts.

Bill read first time.

**The Hon. the Speaker:** Honourable senators, when shall this bill be read a second time?

On motion of Senator Carstairs, bill placed on Orders of the Day for second reading two days hence.

[English]

## BUSINESS OF THE SENATE

**Hon. Marcel Prud'homme:** Honourable senators, to be clear, we had six hours of debate and then we took — I do not know how long. I know the clerk's staff will tell us how long it took. Did the hour prior to the vote count as part of the six hours?

By the way, earlier in the exchange, I hope everyone understands that I did not cast any shadow on the actual leadership of the government. I was speaking about the future leadership. I mention that just in passing.

I would like to know exactly how many hours we have left.

**Senator Carstairs:** None.

**Senator Prud'homme:** I have to go back and forth to Montreal. How many hours will be left, not counting the vote?

• (2030)

**The Hon. the Speaker:** The time for debate has passed. The only thing that remains to be done is to vote on all stages of the bill. That will be done tomorrow at 5:30 p.m., and the vote will be preceded by a 15-minute bell.

[Translation]

## PUBLIC SERVICE MODERNIZATION BILL

### THIRD READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Harb, for the third reading of Bill C-25, An Act to modernize employment and labour relations in the public service and to amend the Financial Administration Act and the Canadian Centre for Management Development Act and to make consequential amendments to other Acts,

And on the motion in amendment of the Honourable Senator Beaudoin, seconded by the Honourable Senator Comeau, that the Bill be not now read a third time but that it be amended in clause 12, on page 126, by replacing lines 8 to 12 with the following:

“30. (1) Appointments by the Commission to or from within the public service shall be free from political influence and shall be made on the basis of merit by competition or by such other process of personnel selection designed to establish the relative merit of candidates as the Commission considers is in the best interests of the public service.

(1.1) Despite subsection (1), an appointment may be made on the basis of individual merit in the circumstances prescribed by the regulations of the Commission.

(2) An appointment is made on the basis of individual”,

And on the sub-amendment of the Honourable Senator Di Nino, seconded by the Honourable Senator Nolin, that the motion in amendment be amended

(a) by replacing the words “on page 126, by replacing lines 8 to 12” with the following:

“(a) on page 126, by replacing lines 8 to 11”;

(b) by adding after the words “free from political influence” the following:

“and bureaucratic patronage”; and

(c) by replacing the words “of the Commission. (2) An appointment is made on the basis of individual” with the following:

“of the Commission.”; and

(b) on page 127, by adding after line 9 the following:

“(3) The qualifications referred to in paragraph 30(2)(a) and subparagraph 30(2)(b)(i), and any qualification standards referred to in subsection (1), that are established for an appointment in respect of a particular position or class of positions shall apply to future appointments in respect of that position or class of positions, unless any change established by the deputy head or employer to the qualifications or qualification standards, as the case may be, is approved by the Public Service Commission.”.

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I did not ask that for Item No. 3, Bill C-25, the order stand. The bill is currently subject to an amendment and a sub-amendment. I would like us to dispose of one of the amendments, unless someone requests adjournment of the debate.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Senator Comeau has prepared a speech. I believe he was going to deliver it tomorrow, but the decision was made to sit today. Senator Comeau requested adjournment of the debate on Thursday, did he not?

**Senator Robichaud:** Honourables senators, I do not want us to get into debate, but Item No. 3, under “Government Business” on the Order Paper, has not been adjourned in the name of any senator in particular.

My understanding is that the Honourable Senator Comeau is currently travelling out west with the Official Languages Committee, which will not be back for several days; we will therefore not be able to consider any of the amendments if we wait for him. That is why I would like us to move the bill forward by voting on the amendments now before us.



**Senator Kinsella:** Last Thursday, after the motion in amendment was presented, Senator Comeau asked that the debate be adjourned in his name. I was totally prepared to hear Senator Comeau's speech.

**Senator Robichaud:** Honourables senators, I am not challenging the fact that, last Thursday, Senator Comeau moved the adjournment or that the order stand until the next sitting of the Senate. The next sitting was today, and Senator Comeau is currently out west with the Official Languages Committee. There is nothing wrong with that, since he is a member of that committee.

If we were to wait for him, we would have to wait at least a week. I just want to move this issue forward.

**Senator Kinsella:** Honourables senators, the opposition has another point to make on this matter, and I am sure that tomorrow one of my colleagues will be able to speak on the topic and we will not have to wait for Senator Comeau.

On motion of Senator Nolin, debate adjourned.

#### PARLIAMENT OF CANADA ACT

#### BILL TO AMEND—SECOND READING— ORDER STANDS

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable

Senator Graham, P.C., for the second reading of Bill C-34, An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I wish to inform you that tomorrow Senator Oliver will be using the 45-minute period allocated to him as opposition critic on this bill. He will definitely speak tomorrow.

Order stands.

#### BUSINESS OF THE SENATE

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I believe that there would be agreement that the remaining items be allowed to stand and retain their precedence on the Order Paper.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, that all other items be allowed to stand and retain their precedence on the Order Paper?

**Hon. Senators:** Agreed.

The Senate adjourned until Tuesday, October 21, at 2 p.m.

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CANADA

# Debates of the Senate

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OFFICIAL REPORT  
(HANSARD)

**Tuesday, October 21, 2003**

—

THE HONOURABLE DAN HAYS  
SPEAKER

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## THE SENATE

Tuesday, October 21, 2003

The Senate met at 2 p.m., the Speaker in the Chair.

Prayers.

### SENATORS' STATEMENTS

#### BRITISH COLUMBIA

##### FOREST FIRES

**Hon. Ross Fitzpatrick:** Honourable senators, this is the first time since the Okanagan Mountain Park fire that I have had an opportunity to pay tribute in this chamber to the exceptional valour displayed by the many firefighters, men and women of the Canadian Armed Forces, the RCMP, emergency workers and volunteers who so courageously battled the fire, as well as the Caribou, Chilcotin and Kamloops fires. Although mere words cannot adequately express the admiration and gratitude deserved, I want to formally and publicly thank all of those who did so much to save lives, homes, businesses and property.

Honourable senators, this summer was one of the worst in history for forest fires in my province of British Columbia. A constellation of factors created the conditions for the perfect firestorm in the Okanagan. With hundreds of fires already devastating large swaths of British Columbia, a lightning strike ignited the provincial Okanagan Mountain Park and the resulting fire consumed thousands of hectares of valuable park and forest.

As honourable senators are no doubt aware, Kelowna was a community in crisis. The residents of Kelowna experienced both an economic and emotional ordeal: 238 families lost their homes; many others lost personal property, businesses and jobs; and over 30,000 people, including my family and myself, were forced to evacuate. The environment has been devastated and important heritage sites, such as the Kettle Valley Railway trestles in Myra Canyon, have been destroyed or damaged.

My concern and sympathy has been expressed to those who lost their homes and businesses, and to those who lost irreplaceable personal property. I wish to underline those thoughts here again today.

Honourable senators, I am also proud to say that the people of the Okanagan have a tremendously strong and resilient spirit, and I am overwhelmed by their determination to regroup and to rebuild.

I want to thank members of the government and the other parties who visited the Okanagan at this critical time to offer help and encouragement. In particular, I want to thank my many friends and colleagues in this chamber who took the time to phone or write to express their concern for my family and myself. Your kind words and compassion were greatly appreciated and will not be forgotten.

In closing, I also want to bring to the attention of honourable senators the peril and devastation that the residents of Squamish and Pemberton are currently facing with the horrendous rains and wish them an early respite from the floods. I would also like to express my deepest sympathy to those who have lost family or friends to these floods.

Honourable senators, this has been a difficult year for many people in British Columbia, and I thank you for your support.

#### THE LATE GEORGE R. BAKER

##### TRIBUTE

**Hon. C. William Doody:** Honourable senators, I rise today to bring you some sad news: George R. Baker, a former editor of the *Debates of the Senate*, passed away on Tuesday, October 7, at the age of 82.

Born in Aldeburgh, Great Britain, George served as a bomber navigator in the RAF during World War II. He left the RAF in 1946 as a Flight Lieutenant and Navigation Leader to become a shorthand reporter in the High Courts of Justice. In 1949, George immigrated to Canada and took a job as a court shorthand reporter with the Supreme Court of Ontario in 1950. After leaving the Supreme Court, he remained in touch with his colleagues as a member and, for a period, President of the Chartered Shorthand Reporters' Association of Ontario.

George joined the Senate as a Hansard Parliamentary Reporter in 1959 and became the Editor of the Senate Debates Branch in 1980, where he remained until he retired in 1987. During this time, George Baker was instrumental in forming the Commonwealth Hansard Editors' Association and was a valued supporter of the Hansard Association of Canada.

His Senate colleagues will remember him for his keen sense of humour, and his dedication and faithfulness to his colleagues and those who worked around him. He enjoyed working with senators, and he served the Senate well.

I extend my condolences to his wife, Hazel, his three children and his many grandchildren and great grandchildren.

#### THE HONOURABLE JOYCE FAIRBAIRN

##### CONGRATULATIONS ON RECOGNITION BY CANADIAN FOUNDATION FOR PHYSICALLY DISABLED PERSONS

**Hon. Consiglio Di Nino:** Honourable senators, on Monday October 13, 2003, an event was inaugurated to further expose and celebrate the talents and skills of those with disabilities. Conceived by a Canadian sports icon, Mr. Jeff Adams, and Mr. Vim Kochhar of the Canadian Foundation for Physically Disabled Persons, the first annual wheelchair road races — dubbed the Rolling Rampage — were held in Toronto. The event attracted men and women from several countries and was, by any measure, a great success.



• (1410)

I bring this to the attention of honourable senators today to place on the record the enormous commitment to promoting the causes of those with disabilities by one of our own colleagues, Senator Joyce Fairbairn. Her leadership and contribution to this and many other events in support of disabled persons was acknowledged and recognized at the awards ceremonies the next day.

I am sure all honourable senators will join with me in applauding Senator Fairbairn and in thanking her for her tireless dedication to this cause.

**Hon. Senators:** Hear, hear!

## GOVERNOR GENERAL

### STATE VISITS TO FINLAND AND ICELAND

**Hon. Donald H. Oliver:** Honourable senators, Canada, like Finland and Iceland, is a northern country, but far too little is known of the North — the people, their traditions and cultures.

As Canadians, we must cancel and modify our dated views of the North as a wild frontier and a barrier and something that must be crossed, penetrated, overcome, managed or subdued. Those views lead to the marginalization of the North and have prevented our fully accepting and understanding the cultural and environmental contributions of our northern brethren.

Honourable senators, it was with this concept of our northern heritage in mind that Her Excellency the Governor General Adrienne Clarkson led a highly successful state visit to Finland and Iceland — two countries in the circumpolar region of which Canada is a part. As she said, "This east-west pull along the latitudes should be compelling for us as circumpolar people."

The Canadian delegation of authors, musicians, scientists, architects and many others, as outlined yesterday by Senator Rompkey, explored in Finland with indigenous people, environmentalists, politicians and educators the possibilities that we can stretch our imaginations beyond the margins that have limited us to date. The state tour was designed to revise and refresh our thinking on the meaning of the North and our relationship to it.

Canadians should be extremely proud of the contribution and the efforts of Her Excellency Governor General Adrienne Clarkson and His Excellency John Ralston Saul. They are widely admired and respected around the world for their leadership and for developing a greater understanding of the circumpolar region. They are acknowledged champions in their drive to break down systemic barriers that have too long divided

us. They are proud examples for all of us in their aim to promote our culture and the visual and performing arts of Canada as among the best in the world. Most important to me, Their Excellencies are champions for our Canadian diversity.

As the son of a janitor from Wolfville, Nova Scotia, I was humbled and deeply honoured to be included among the prestigious delegates.

Canada's place in the world has been enhanced under their leadership. As distinguished writers, they have been disciples of Canadian scholarship in both the arts and the sciences.

Before the state visit to Iceland and Finland, bilateral trade flows were comparatively modest. Their Excellencies have been uniquely successful in forging stronger trade and economic ties with every country they have visited. As a trading nation, that is good news for all of us.

Reciprocal state visits are part of their duties. I witnessed first hand that they discharged these international obligations on behalf of all of us with intelligence and charm.

Honourable senators, I have had an opportunity to read editorials from Finland and Iceland about our visit. Unlike our Canadian media, they have all been positive in their praise for the leadership shown by our Governor General. One editorial said that the visit ensures "that Icelanders will get a unique opportunity to become acquainted with Canadian society and culture."

Honourable senators, let me conclude by giving an example of the vision of Her Excellency in her address to the Stefansson Memorial Lecture in Akureyri, Iceland, on Monday, October 13, 2003, when she said:

In our northern-ness, Icelanders and Canadians have a potential that still lies untapped, especially in tackling common challenges to our societies. We only need to look to hydrogen-based energy, to genetic research and biotechnology, to protection of the northern environment — its lands and waters and marine life — to see areas where Iceland and Canada can achieve much by working together. That is why we have brought on this state visit a delegation of Canadians who are leaders in their respective fields.

The final leg of the circumpolar tour will take place next year when Their Excellencies lead a distinguished delegation to Norway, Denmark, Sweden and Greenland.

I strongly urge honourable senators to support Their Excellencies as they continue to enhance Canada's place in the world. I was the only opposition member on the delegation. Next time, I hope that all parties will proudly permit their delegates to participate for the good of our country.

[Translation]

• (1420)

## ROUTINE PROCEEDINGS

## HOLOCAUST MEMORIAL DAY BILL

## FIRST READING

**The Hon. the Speaker** informed the Senate that a message had been received from the House of Commons with Bill C-459, to establish Holocaust Memorial Day.

Bill read first time.

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the second time?

On motion of Senator Robichaud, bill placed on the Orders of the Day for second reading two days hence.

[English]

ENERGY, THE ENVIRONMENT  
AND NATURAL RESOURCESCOMMITTEE AUTHORIZED TO MEET  
DURING SITTING OF THE SENATE

**Hon. Tommy Banks:** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(a), I move:

That the Standing Senate Committee on Energy, the Environment and Natural Resources have power to sit at 6 p.m. today, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

We have witnesses who have long been scheduled for five o'clock, which we could put off until six o'clock today following the vote.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

Motion agreed to.

## NATIONAL SECURITY AND DEFENCE

NOTICE OF MOTION TO AUTHORIZE COMMITTEE  
TO MEET DURING SITTING OF THE SENATE

**Hon. Colin Kenny:** Honourable senators, I give notice that on Wednesday, October 22, 2003, I will move:

That the Standing Senate Committee on National Security and Defence have power to sit at 5 p.m., Monday, October 27, 2003, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

## QUESTION PERIOD

## FOREIGN AFFAIRS

ASIA-PACIFIC ECONOMIC COOPERATION SUMMIT—  
PRIME MINISTER—EXPRESSION OF DISAPPROVAL  
OF MALAYSIAN PRIME MINISTER'S  
ANTI-SEMITIC COMMENTS

**Hon. David Tkachuk:** Honourable senators, last Thursday, Malaysian Prime Minister Mahathir delivered an offensive, anti-Semitic speech before a summit of the Organization of the Islamic Conference, a speech in which, among other things, he claimed that the Jews ruled this world by proxy. He suggested that Muslims should rise against them for a final victory. When Prime Minister Jean Chrétien met with Mr. Mahathir yesterday at the summit of the Asia-Pacific Economic Cooperation, APEC, they shook hands. Mr. Chrétien said nothing to Mr. Mahathir about his inflammatory words.

My question is for the Leader of the Government in the Senate. Why has our Prime Minister not made his condemnation and the condemnation of his country personally known to Mr. Mahathir?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, the Prime Minister made his condemnation personally known very quickly when the Minister of Foreign Affairs, Bill Graham, issued a clear statement on the Canadian government's thoughts. As well, the high commission in Ottawa was informed of the position of the Canadian government on Mr. Mahathir's statements.

**Senator Tkachuk:** Honourable senators, other heads of state at the APEC summit have made known to the Malaysian Prime Minister their disapproval of his rhetoric. U.S. President George Bush made it known that Mr. Mahathir's words were divisive and wrong and that they stand squarely against what Mr. Bush believes in. Could the Leader of the Government in the Senate tell us, in the absence of any meaningful censure by our Prime Minister, if our foreign minister will condemn the remarks of the Malaysian Prime Minister in the House of Commons?

**Senator Carstairs:** Honourable senators, the remarks made by the Malaysian Prime Minister were addressed immediately, which is the appropriate response of the Government of Canada. When such remarks are made, the government responds immediately, and this was done not only to the Malaysian government but also to the High Commission of Malaysia.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I have a supplementary question for the Leader of the Government in the Senate. U.S. Secretary of State Powell reacted immediately to the remarks, but that did not stop President Bush from personally repeating his thoughts more forcefully to Prime Minister Mahathir directly. Why was our Prime Minister not able to follow that example?



**Senator Carstairs:** Honourable senators, to my knowledge, Prime Minister Chrétien did not have a private meeting with Prime Minister Mahathir; President Bush did have such a meeting.

**Senator Lynch-Staunton:** Honourable senators, Prime Minister Chrétien could only criticize a public person in private. He is too hesitant, if not cowardly, to do so in public.

**Senator Carstairs:** The honourable senator and I have a basic disagreement on basic manners. When one is greeting another at an international meeting in a brief period of time, one practices common courtesies, especially when one's position on the other's previous remarks has been clearly and forcefully stated earlier.

**Senator Tkachuk:** Honourable senator, according to a newspaper article I read, a spokesman for the Prime Minister's Office, when asked why Prime Minister Chrétien did not make any comments, said that the Minister of Foreign Affairs expressed the views of the government on that issue. Foreign Affairs spokesman Kimberly Phillips said that Canadian officials called Dennis Ignatius, Malaysian High Commissioner to Ottawa, last Friday to register our condemnation of Mahathir's comments. Exactly what did the Minister of Foreign Affairs say? Did the minister make a public statement and, if so, what did he say?

**Senator Carstairs:** Honourable senators, the only information I have is the statement that Canada strongly condemns these offensive and inflammatory remarks. They were clearly anti-Semitic and intolerant in nature. The Department of Foreign Affairs called in the Malaysian High Commissioner to Canada to register our condemnation of these remarks. That is the method by which we express our dissatisfaction.

**Senator Tkachuk:** Who said that, so that I am clear? I am a little confused and should like the honourable leader to take me through this. First, what did Foreign Affairs Minister Graham say publicly about this matter? Is the leader's quote drawn from the Minister of Foreign Affairs, or is it the quote of a bureaucrat in the department?

**Senator Carstairs:** Honourable senators, Minister Graham said that the remarks were unacceptable.

**Hon. A. Raynell Andreychuk:** Honourable senators, I thought our usual practice was, first, to invite the person who made the comments to retract them and, then, if the individual refused to do so to take action to ensure that our position is noted more tangibly. In light of that, has the Government of Canada requested that the Prime Minister of Malaysia withdraw those remarks? If the Malaysian Prime Minister will not withdraw his remarks, what action will Canada take?

**Senator Carstairs:** Honourable senators, the Government of Canada did what it always does under similar circumstances: It called in the Malaysian High Commissioner to Canada and registered our condemnation of the remarks.

**Senator Andreychuk:** Honourable senators, if there is no response or reconsideration by the Prime Minister of Malaysia, would this lead to a reconsideration of our relationship, attitude toward and working arrangement with the Government of Malaysia, not the people of Malaysia?

**Senator Carstairs:** I hope it would not have an impact on our relationship with the people of Malaysia. It is my understanding that Prime Minister Mahathir will not hold that position for much longer. He has announced his resignation, which will allow us to continue a positive relationship with the people of Malaysia.

**Senator Andreychuk:** I have a final supplementary question. Mr. Mahathir has indicated that he will not stay on, although we do not know whether he will follow through. I surely hope that we are not putting much emphasis on his words. In light of that, what actions will the government take? What analysis will the government make to encourage a more respectful international human rights attitude from the future government of Malaysia?

**Senator Carstairs:** With the greatest respect, senator, I do not think we can do much more than condemn the words of the Malaysian Prime Minister, which our government did immediately.

**Senator Lynch-Staunton:** It was not done face to face.

**Senator Andreychuk:** Are we considering supporting both opposition parties and human rights groups who are also advocating the change of the government in Malaysia, as we do in other countries?

**Senator Carstairs:** Honourable senators, I apologize for asking the honourable senator to repeat the question.

**Senator Andreychuk:** When we know there will be a change in government in another country from a dictatorial regime, we will often support the democratic forces, such as human rights groups, to ensure that this kind of attitude does not prevail. We have been quite candid in our support of opposition and human rights groups against dictatorial, repressive and, in this case, anti-Semitic groups. What will we do in Malaysia about the position of the government?

**Senator Carstairs:** The honourable senator seems to be suggesting something that I think is potentially dangerous — that we will support regime changes in countries when someone makes a remark that we do not like. If the honourable senator wishes, I will bring that comment forward to the government on her behalf.

**Senator Andreychuk:** I have a supplementary on that. We have often taken stands against dictators and repressive regimes in support of democratic forces. Is the honourable leader suggesting that the government has not done that and will not do that?

**Senator Carstairs:** Honourable senators, I am not suggesting any such thing. However, I am suggesting that recently, in the world theatre, presidents and prime ministers seem to think that regime change is the responsibility of democratic countries. I do not think I want Canada to stand for that kind of activity.

• (1430)

**Senator Tkachuk:** I have one more supplementary question to ask because I still do not understand what happened. We have the prime minister of a country making these remarks. The honourable leader says that the Minister of Foreign Affairs, although as far as I can tell he has not said it publicly in the House of Commons or at a press conference, has condemned this action. Then she says that the Malaysian High Commissioner was called on the carpet. Who called him on the carpet and with whom did he actually meet?

**Senator Carstairs:** I do not know either, senator, and I will try to get that information.

**Senator Tkachuk:** How can the honourable senator sit here and claim that objections were made about what the Malaysian Prime Minister said when she does not even know who met with this person?

**Senator Carstairs:** I was informed, and I have informed the honourable senator, that the Malaysian High Commissioner was called in to the Department of Foreign Affairs. If my honourable friend is asking me exactly with whom he met, I cannot give him that information, but I will seek to obtain it.

#### MALAYSIA—PRIME MINISTER'S SPEECH CONTAINING ANTI-SEMITIC COMMENTS

**Hon. Marcel Prud'homme:** Honourable senators, many years ago I had the honour of being invited by former Speaker Charbonneau to travel to Malaysia, where Speaker Charbonneau, an esteemed Speaker and a good friend of all of us, had a very long and interesting discussion. I was with him at that time and with others as well. In no way will I comment on Mr. Mahathir's comments, but I hope that members will not fall into the trap that the National Assembly of Quebec fell into when they condemned the man on a statement that no one had completely read. That is a dangerous precedent.

I should like to draw to the attention of honourable senators the fifty-ninth paragraph that Mr. Mahathir delivered, one that the minister herself should read. Some of what it contains was a great surprise to me, talking about democracy, vigorously attacking the division of the Muslim communities of the world, going in every direction. Rather than having me defending a paragraph or two, I think honourable senators would be enlightened to read the entire speech that was delivered. I have a copy here, and I am having copies made. There are 59 paragraphs in all.

I knew that this was a hot subject. I wish that the Leader of the Government in the Senate would recommend to people, senators included —

**Some Hon. Senators:** Question!

**Senator Prud'homme:** Has the Leader of the Government in the Senate read the entire speech of Mr. Mahathir, but I have read quotes. They were anti-Semitic in nature, and I condemn them.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I have not read the complete speech of Mr. Mahathir, but I have read quotes. They were anti-Semitic in nature, and I condemn them.

**An Hon. Senator:** Tell him. Call him up and tell him.

#### AUDITOR GENERAL

##### LEAKS OF ASPECTS OF UPCOMING REPORT

**Hon. Marjory LeBreton:** Honourable senators, I have a question arising from the upcoming Auditor General's report. This question does not require an answer about the contents of the report, and thus I hope the Leader of the Government will see fit to answer it.

As the minister indicated yesterday, the Auditor General's report has not yet been tabled in Parliament. The usual process is that ministers receive an advance copy of the chapters that concern their portfolios so that they can either defend their views or indicate how they will respond to the recommendations. Parliament and the public become aware of the contents of the report after it is tabled in the other place.

Has the government launched an investigation into how the contents of the report found their way into the media with a view to finding out who is responsible? More important, what steps does the government intend to take to protect the integrity of the process?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I have no knowledge of any investigation that has been conducted on the Auditor General's so-called leaked report.

**Senator LeBreton:** Honourable senators, it is well known that the Auditor General's report will be scathing in its criticism of the government. It is also well known that Mr. Martin would prefer that it be released this fall so that the blame will be clearly placed on the shoulders of Mr. Chrétien, rather than released on the eve of a premature election in the spring. Various sections of this report are now in the hands of several ministers, and thus in the hands of their assistants, many of whom are supporters of Mr. Martin. There have been leaks about this report, leaks about their nature; therefore, some of these chapters will be old news by the time the Auditor General's report finally is tabled in November or in February.

Could the Leader of the Government in the Senate assure honourable senators that leaks about the executive aircraft and about Crown corporation sponsorships were not a deliberate act on the part of supporters of Mr. Paul Martin to get the "bad news" contents of this report out sooner rather than later?



**Senator Carstairs:** Honourable senators, the Honourable Senator LeBreton has knowledge that I certainly do not have. I have no knowledge that several sections of the report have been made available to any ministers or to any staff of those ministers, nor do I even know whether it is well known that the report will be scathing. The Auditor General herself has indicated the report will not be ready for tabling until November 25.

**Senator LeBreton:** That is interesting. The minister's own cabinet colleague, Minister Ralph Goodale, was reported in *The Globe and Mail* on Saturday as saying that the sooner the report is out, the sooner we can begin acting on her recommendations, and the sooner the better. The government now has most of these recommendations. It is well known that this is the procedure that the Auditor General follows. The ministers have the report because, as I said, the Auditor General gives it to them so that they can respond. Again, I am not asking the government leader to comment on the specific details of the recommendations, although I know that the Prime Minister is already defending the purchase of jets, so he is commenting on the report.

Most reports of the Auditor General contain recommendations that could have been implemented long ago. It is not unusual for the government to respond by saying that it has already started to work on some of these egregious areas.

What are we to make of all of this? Whether it be reforms to the sponsorship program or an end to last-minute jet purchases, are we to understand that the government will not be acting on any of the recommendations of this report until the day it is formally to be made public?

**Senator Carstairs:** I would hope the government would not act on any report before it is made public. What is the point of saying that we have an independent officer of Parliament if we pre-empt her by responding to her report before she has even made it?

**Senator LeBreton:** The honourable senator has just made my argument. Minister Goodale is quoted as saying that the sooner the report is out, the sooner the government will begin to act. When these reports are tabled, governments always respond that they have already started to take measures to correct these errors. I am asking whether the government has already made a decision about what it will do about future jet purchases or whether it will deal with recommendations regarding government sponsorships?

**Senator Carstairs:** With the greatest of respect, when the minister says "the sooner the better," that does not give an indication that he has seen anything. He is just saying that the sooner the report is ready, the sooner we will be able to take action.

[Translation]

## NATIONAL DEFENCE

### UPCOMING AUDITOR GENERAL'S REPORT— PURCHASE OF EXECUTIVE AIRPLANES

**Hon. Jean-Claude Rivest:** Honourable senators, setting aside the Auditor General's report, can the minister tell us whether it is true

that the government purchased two planes? Could she assure this chamber that all the rules and procedures were followed? This is a question of fact, independent of the Auditor General's report.

[English]

**Hon. Sharon Carstairs (Leader of the Government):** The Prime Minister has never, in any way, indicated anything other than that, first, two planes were purchased some time ago and, second, that all the rules were followed.

[Translation]

**Senator Rivest:** Honourable senators, were all the rules followed, yes or no? This is a question of fact. Does the minister know? Were the rules and procedures for purchasing these planes followed?

[English]

**Senator Carstairs:** The Prime Minister has said yes, all the rules were followed.

[Translation]

**Senator Rivest:** Honourable senators, if the Auditor General says the opposite, does this mean she is wrong?

[English]

**Senator Carstairs:** The Auditor General is scheduled to come forward with a report. When the Auditor General comes forth with her report, we will know what that report says.

## HUMAN RESOURCES DEVELOPMENT

### EMPLOYMENT INSURANCE— ELIGIBILITY OF FLIGHT ATTENDANTS

**Hon. Edward M. Lawson:** Honourable senators, my question is directed to the Leader of the Government in the Senate. I thank her for the written response on the concern I raised a few days ago about flight attendants. I wish to preface my question by referring to a part of that answer. Here is an explanation of the situation.

Under the EI regulations, when a full-time employee's hours of work are restricted to less than 35 hours per week because of a federal or provincial statute, they are deemed to be insured for 35 hours per week. This has applied to pilots and navigators and flight attendants for all these many years.

• (1440)

As a result of an insurability ruling requested by an employee of Royal Aviation, the Canada Customs and Revenue Agency, or CCRA, determined with Transport Canada that only the flight crew have restrictions. Contrary to our understanding and to that of CCRA, only the pilots and navigators are considered to be flight crew. This is a ridiculous decision, to determine that flight attendants are not flight crew. Ask any pilot, any captain, and they will tell you that the flight attendants are a very important part of the flight crew.

This goes back to the beginning of aviation, when the Wright brothers first created their aircraft. They decided very quickly that, if this were to be a successful commercial mode of transportation, a few "Right sisters" needed to be part of the flight crew.

Getting to my question, what troubles me is that there are no federal-provincial statutes covering the total hours flight attendants are permitted to fly; therefore, they can only be insured for the actual hours worked and paid. As many honourable senators know, flight attendants are on duty for 13 hours but get paid for six and a half hours. Under this new system, this determination by Canada Customs and Transport Canada, the 40-hour week benefits that they ordinarily would have received are reduced to 22 weeks.

There have been layoffs. There will be more layoffs after the Christmas holidays. These people will suffer accordingly.

I can understand that the Ministry of Transport wants to deal with the problem, so it quickly brings in a crew of public servants. The public servants rush to ensure that the workers are not being overpaid for their benefits, and they get the benefits reduced as quickly as possible. I wish they would use the same speed and alacrity to retrieve the hundreds of millions of dollars that have been overpaid to the provincial governments but which have not come back yet.

Why this haste? Why this approach toward 10,000 or more mostly female employees? This action appears on its face to be anti-women, but I cannot believe the Liberal government would be part of that.

I am also naive enough to believe that the minister would say: In our role of government, our Liberal philosophy, as a ministry, is to take care of and help the people under our ministry and not to hurt them.

While the ministry was working with the CCRA on cutting the benefits, why did the minister not say — and I will bring you to the solution because it is written in here:

There is no federal or provincial statute covering flight attendants with respect to the total hours they are permitted to fly. Therefore, they can only be insured for the actual hours worked and paid.

Until such a federal statute is put in place by Transport Canada, HRDC has no option but to consider the flight attendants' actual hours worked and paid...

**The Hon. the Speaker:** Senator Lawson, I would ask you to frame your question. There are only four minutes left in Question Period, and there are a number of senators who have questions.

**Senator Lawson:** Before doing all these things to reduce the workers' benefits, why did the Ministry of Transport not do its best to protect the workers? The minister has a discretionary authority to bring in a regulation to restore the workers to where they rightfully belong and to see that they are paid their proper benefits.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I will forward that representation to the respective minister on behalf of the honourable senator.

## NATIONAL DEFENCE

### PURCHASE OF EXECUTIVE AIRPLANES— CONSISTENCY WITH TRADE AGREEMENTS

**Hon. Michael A. Meighen:** Honourable senators, I want to come back to the matter raised by my colleague Senator Rivest. The Prime Minister has defended the decision to purchase those two executive aircraft on the very last day of the fiscal year because, to quote him, "We had money at the end of the year." That is a wonderful reason.

Will the Leader of the Government in the Senate confirm that if the money had not been used to buy those aircraft, the funds would have been applied to debt reduction? If so, does that mean that the purchase of executive aircraft by this government takes precedence over debt reduction, not to mention the purchase of aircraft that our military so desperately needs?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators will know that, while the previous administration increased the debt load of Canada, debt has been consistently reduced by this government —

**Some Hon. Senators:** Oh, oh.

**Senator Carstairs:** — by billions and billions of dollars. That has been a very positive move in terms of the stability of our economy in this country.

In terms of whether the planes were purchased, yes, they were. Were they purchased at the end of the year? Yes, they were. Were they needed? Yes, they were.

**Senator Meighen:** This government always forgets to mention that debt reduction goes ahead because of the GST and free trade.

**Some Hon. Senators:** Hear, hear!

**Senator Meighen:** Some of my honourable colleagues across the way are so young that they have probably forgotten that those were not Liberal policies. Those were policies that came forward from this side of the house.

In any event, when the Prime Minister's Office goes out of its way to spend \$100 million at the very last minute, over the objections of the Minister of Defence, over the objections of senior officials in other departments and without any competitive bids, what kind of message would the government leader suggest is being sent to lower-level public servants who may be sitting on extra cash at the end of the fiscal year? Should they be thinking of creative ways to make it vanish?



**Senator Lynch-Staunton:** Or committees of the Senate.

**Senator Meighen:** Should they be thinking of creative ways to make it vanish?

**Senator Carstairs:** First, honourable senators, I dispute whether these decisions were made over the objections of any minister of the Crown. Certainly, the jets were purchased. The purchase was made because it was believed to be appropriate for the travel needs of the Prime Minister and the others who use those jets. They were purchased as Canadian products because the Prime Minister believes, as do I, that we should be showing off our ability to produce these planes and not purchasing planes that are not built in this country.

**Senator Meighen:** Obviously, the Prime Minister does not believe that Canadian-made products can win in open competition because he decided not to have a bidding process, that that was the only way the Canadian-made planes could win. I do not think that is so. I think our products can win in open competition. I do not think it is right to subvert the rules that we normally follow.

Can the Leader of the Government tell us if a legal opinion was sought on whether this process was consistent with the internal trade agreement, not to mention our international trade obligations?

**Senator Carstairs:** Honourable senators, I do not know whether a legal opinion was sought. However, it is important that Canadian ministers and, most particularly, the Canadian Prime Minister, show their pride in Canada by flying on Canadian-made products.

**Some Hon. Senators:** Hear, hear!

**Senator Meighen:** It is about time that they did so. I will remember when those planes were in development and the government did not see fit to purchase them and fly them around the world, but that is another story.

If that legal opinion does exist, would the Leader of the Government in the Senate undertake to produce it?

**Senator Carstairs:** Honourable senators, I would suggest that that is not usually the custom, as the honourable senator well knows. When the government solicits legal opinions, they are for the government.

**Senator Meighen:** The Leader of the Government has said that she does not believe that the Minister of Defence objected to the purchase at the very last minute. That is what was reported in the press. That may well be wrong. Could we find out what is the truth?

**Senator Carstairs:** Perhaps honourable senators will find out more about this and about other things when the Auditor General tables her report — when that report is ready to be tabled.

**Hon. Consiglio Di Nino:** Honourable senators, the Leader of the Government in the Senate suggested, and we have all read, that the Prime Minister bought these planes because the money was there; there was money left over.

We have a tradition, particularly in this place, that if money is left over at the end of the year, one does not just look for opportunities to spend it. One does not suggest to one's colleagues that the money be kept back and used for other good purposes. Are there different rules for the House of Commons? Are there different rules particularly for the Prime Minister and his office than there are for this house?

**Senator Carstairs:** Honourable senators, there are no different rules. Legitimately needed expenditures take place in this chamber, and they also take place in the PMO.

[Translation]

## ANSWERS TO ORDER PAPER QUESTIONS TABLED

### HUMAN RESOURCES DEVELOPMENT— ALTERNATIVE FUELS ACT

**Hon. Fernand Robichaud (Deputy Leader of the Government)** tabled the answers to Questions No. 29, 30 and 31 on the Order Paper—by Senator Kenny.

### MINISTER OF STATE AND LEADER OF THE GOVERNMENT IN THE HOUSE OF COMMONS— ANTI-TERRORIST ACT

**Hon. Fernand Robichaud (Deputy Leader of the Government)** tabled the answer to Question No. 125 on the Order Paper—by Senator Lynch-Staunton.

[English]

## AGRICULTURE AND FORESTRY

### COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Leave having been given to revert to Notices of Motions:

**Hon. Donald H. Oliver:** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(a), I move:

That the Standing Senate Committee on Agriculture and Forestry have power to sit at 5:30 p.m. today after the standing vote, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, there is a vote at 5:30 p.m. Has the honourable senator taken that into consideration?

**Senator Oliver:** I believe I said "after the vote."

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

Motion agreed to.

## THE SENATE

### INTRODUCTION OF NEW PAGES

**The Hon. the Speaker:** Honourable senators, we have new pages and I would like to introduce some of them to you today.

The first is Janelle Boucher. She is a native of Monastery, Nova Scotia. She is a second-year student at the University of Ottawa, where she is joint majoring in political science and communication.

[Translation]

David Bousquet comes from Saint-Hyacinthe, Quebec. He is a third-year student at the University of Ottawa in the department of philosophy. He previously served for three years in the Canadian Armed Forces.

[English]

Clinton Unka is a northern Aboriginal from Yellowknife, Northwest Territories. He is currently attending Carleton University in his second year of a degree in political science.

[Translation]

## ORDERS OF THE DAY

### BUSINESS OF THE SENATE

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, under Government Business, under the heading Bills, I would like to begin with Item No. 5, that is, Bill C-34. Then we can continue with Items Nos. 1, 3, 6 and 4.

And of course, there will be a vote on Item No. 2 at 5:30 p.m.

[English]

## PARLIAMENT OF CANADA ACT

### BILL TO AMEND—SECOND READING— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable

Senator Graham, P.C., for the second reading of Bill C-34, to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence.

**Hon. Donald H. Oliver:** Honourable senators, in preparing some remarks to participate in this debate, I began by reading and by rereading the remarks of Honourable Senator Carstairs, the Leader of the Government in the Senate, both in May and on October 7. There are two or three key paragraphs that I would like to refresh honourable senators' memories with before I begin my formal comments today.

In one part of her address on October 7, 2003, at page 2031 of the *Debates of the Senate*, the Honourable Senator Carstairs said the following:

Bill C-34 would amend the Parliament of Canada Act to provide for the appointment of an independent Senate ethics officer for members of the Senate, and an independent ethics commissioner for public office holders and members of the other place.

She then said:

Honourable senators, this is possibly the most significant change from the original bill because that bill proposed by the government wanted, of course, to have only one ethics officer and it was made in direct response to the advice received from the Standing Committee on Rules, Procedure and the Rights of Parliament. The standing committee disagreed with this approach of having one officer and proposed the establishment of a separate Senate ethics officer. Honourable senators, the government listened and Bill C-34 would implement this recommendation.

On rereading that clause, which the honourable senator says is possibly the most significant change from the original bill, what it does not do is deal with perhaps the most fundamental issue raised in the Rules Committee over many weeks of serious deliberation.

Bill C-34 is described as "An Act to amend the Parliament of Canada Act." A number of senators did not want to see the commissioner appointed pursuant to an act or a statute but, perhaps, by way of resolution. Here, however, we have, "An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence."

Clauses 1 and 2 of the bill state that sections 14 and 15 of the Parliament of Canada Act are repealed and that the act is amended "by adding the following after clause 20." Proposed section 20.1 reads as follows:

The Governor in Council shall, by commission under the Great Seal, appoint a Senate Ethics Officer after consultation with the leader of every recognized party in the Senate and after approval of the appointment by resolution in the Senate.



Honourable senators, that is the key matter that I should like to deal with as I rise today to speak to Bill C-34 during this second reading debate.

I believe that I come to this debate with some background in this area and a certain degree of knowledge gained while I was involved with the Honourable Peter Milliken, now Speaker of the House of Commons, during a period when we developed a report entitled "Code of Official Conduct." This was the report of the Special Joint Committee on a Code of Conduct, which Peter Milliken and I co-chaired in 1997.

As an aside, honourable senators, after that report was tabled in 1997, the Honourable Speaker Milliken and I were invited to travel to Poland to give a series of lectures on some of the contents of a code of conduct. As a result of participating in seminars with a group of politicians and philosophers in Poland, they liked our draft code so much that that particular code is now the law in Poland. They have adopted the code that was drafted here in Canada by Milliken-Oliver in 1997.

Today, honourable senators, I wish to confine my remarks to an issue that arose during hearings of the Standing Committee on Rules, Procedure and the Rights of Parliament while grappling with the writing of its interim report entitled "Government Ethics Initiative." That is the issue of parliamentary privilege. The question put simply is whether a statutory appointment regime as proposed by Bill C-34 results in parliamentary privileges being trumped so that the activities of the ethics officer or the ethics commissioner, as this person deals with the conduct of parliamentarians, are reviewable by the courts.

A corollary question could be: Does the Charter of Rights and Freedoms trump parliamentary privilege, and will the Charter be applied to the activities of the officer or commissioner, thus giving the courts the role as ultimate arbiter over the meaning, the extent and the application of the privileges of honourable senators? That is the main issue I wish to canvas this afternoon. I believe these questions go to the root of what we are doing here.

• (1500)

I do not question the need, for optics' sake, if little else, of a code of conduct. In fact, we recommended a code way back in 1997, in what is commonly referred to as the Milliken-Oliver report. However, we should be very careful about the method by which the ethics officer is appointed. If we do not do it right, it is my view that it may result in the privileges of senators and the activities of the ethics officer who rules over conduct and privileges being the subject of court adjudication.

Having reviewed the evidence before our own Rules Committee and the relevant court cases involving privilege, I am deeply concerned about how anyone, especially the Leader of the Government in the Senate, can unequivocally say, "Don't worry, parliamentary privilege applies to the activities of the ethics officer, and the courts are excluded."

The fact is that by virtue of clause 20.1 of Bill C-34, the office of the ethics officer is created by statute, outside the *Rules of the Senate*, and somehow it is argued by the government that this does not affect the application of privilege. I am afraid I do not agree.

The 1997 Report of the Special Joint Committee on a Code of Conduct was very conscious of this problem. Indeed, we had lengthy and extensive debate on it, and we had lawyers present us opinions on it. That is why we recommended in the end an ethics officer to be known as a "jurisconsult" to be an officer of Parliament — not a creature of statute but an officer of Parliament — appointed by resolution of the Senate and by resolution of the House of Commons.

We also stated that nothing in the code would affect the privileges of Parliament or parliamentarians or, indeed, the powers of the Speaker of each House. This latter statement was out of an abundance of caution because we felt clearly that an appointment process entrenched in and governed by the *Rules of the Senate* would be subject to all the elements of parliamentary privileges, excluding the courts from determining the nature of our privileges.

Honourable senators, let me be clear about the importance of parliamentary privilege in this context. As every one of you is painfully aware, the Senate has the right to govern its internal operations. There is an important constitutional separation of powers between the judiciary and the legislative branch. A statute-based ethics regime creates a considerable risk, in my opinion, of judicial intervention in the actions of the ethics officer, directly conflicting with the constitutional independence of the Senate and the privileges, rights and obligations of each and every individual senator.

It is no answer, as the government would have us believe, to say, look at clauses 20.5(2) and 20.6(3) of Bill C-34, which both claim that the Senate ethics officer enjoys the same privileges as senators. The key question here is this: Does a statute-based ethics regime invite scrutiny by the courts? If so, this will occur regardless of the wording of these two clauses, which purport to protect, maintain and apply privilege to the Senate ethics officer. If it is open to the courts, it is open to the courts.

Prior to dealing with the applicable case law, I thought it instructive to review the evidence of witnesses given before the Rules Committee and some of the points raised in debate in this chamber as to the effect of a statute-based ethics regime on privileges enjoyed by the senators. Of course, this review leads directly to the discussion of the possibility of judicial interpretation or limitations being placed by the courts on these privileges.

Mr. Brendan Keith, the Principal Clerk of the Judicial Office and Register of Lords' Interests in the House of Lords in Great Britain explained why, when establishing a code of conduct for the Lords, they did not proceed by statute, using the rules of the House of Lords instead. One reason given was that the Lords view themselves as self-regulating and thus dealing with this subject through the rules seemed more appropriate. However, Mr. Keith went on to say: "There is another reason, I think, why we did not contemplate the statutory route. That is to say, any code of conduct has to take account of the constitutional position. As you know, we have a doctrine at Westminster of parliamentary privilege, a doctrine known as exclusive cognizance, which means essentially that the House is responsible for its own internal affairs, free from interference by the executive and by the judiciary. If you were to take the statutory route, there is just the possibility, shall we say, that you might find yourselves being subjected to judicial review in a way that was not anticipated when the statute was enacted."

He went on to say: "Parliamentary privilege has never been a big issue for the House of Lords. However, it has been a significant issue over the years in the House of Commons. I cannot honestly speak for them, but I am pretty sure they do have some fears as to the possibility of judicial review were statute law to be involved in the appointment, for example, of the Parliamentary Commissioner for Standards."

A similar view was expressed by Professor David Smith of the University of Saskatchewan. Granted, he was talking about a statutory code and a single ethics officer for Parliament in a position established by statute. He states that a statutory code "opens the door wide to judicial intrusion into the work and operation of Parliament. The courts have a vital role to play in protecting the rights and freedoms of Canadians, but so do the country's legislatures, which in the case of Parliament means both of its Houses."

Certainly, the most thorough discussion of privilege and its possible erosion by the ethics regime contemplated by the government came from Professor Dale Gibson, a former professor of constitutional law at the University of Alberta. His testimony has been helpful to the Senate on many occasions, and was again when he appeared before the Rules Committee.

He concluded from the relevant case law that inherent legislative privileges are constitutional norms, whether they are derived from statute or common law. The issue then is the reconciliation between "privilege" and the Charter of Rights and Freedoms. We must take this one step further and deal with their application to the actions of an ethics officer whose office is created by statute with the officer's authority based on statute as well.

Professor Gibson reviewed the leading cases, including the *Vaid* case, and concludes that the judiciary has a responsibility to ensure that the exercise of parliamentary privilege in individual cases is consistent with Charter requirements. In his opinion, the *Vaid* case, being a Federal Court of Appeal decision, supports this more activist judicial role, recognizing that the exercise of

privilege or the claim of privilege may be subject to review by the courts under human rights legislation or perhaps the Charter as well.

These are very serious conclusions offered by a serious academic who has studied this area in detail. If nothing else, his view should act as a counsel of caution, moving us away from utilizing a statute to create the position of the ethics officer.

The concerns I raise here have also been raised by other honourable senators in the debate on the interim report from the Rules Committee. For example, Senator Joyal, in his excellent discussion of the report, dealt effectively with the question of privilege that is squarely before us. He quoted from Mr. Joseph Maingot's work, *Parliamentary Privilege in Canada*, which describes the importance of privilege as it relates to a legislative body:

The privileges and control over its own affairs and proceedings is one of the most significant attributes of an independent legislative institution.

• (1510)

Honourable senators, that is so important I would like to repeat it:

The privileges and control over its own affairs and proceedings is one of the most significant attributes of an independent legislative institution.

Senator Joyal stated that a legislative institution must be the master of its own affairs and the master of its proceedings. One of the crucial components of this is the right to enforce discipline on the members of the legislature. I would argue, as I believe Senator Joyal does as well, that we, as senators, must do all we can to protect these privileges and ensure their exercise does not come under judicial scrutiny, particularly, unwittingly. The best way to do this is to proceed, as did the House of Lords, by initiating a change in our rules to provide for the office of the Senate ethics officer and a code of conduct. For, as Senator Joyal later states, when discussing the entrenchment of an ethics office in a statute:

When it becomes law, it becomes the responsibility of the courts to adjudicate and arbitrate. Even though a clause would be included telling the courts to stay out of this, the jurisprudence is thick where the court takes responsibility.

I cannot think of anything clearer than that.

I would like to turn now to review the most relevant court decisions on the subject of privileges. I know Senator Carstairs attempted to do this when speaking on the interim report to assure us that the privileges of this institution and its members would not be compromised by a statute-based ethics regime. I believe it is important to review the leading cases, the majority and minority opinions, because I believe they provide for us a flavour of judicial activism, which, I would argue, could result in judicial interpretation on how we, as senators, exercise our powers and privileges.



For example, in what is sometimes referred to as the leading case in the area, *Donahoe v. New Brunswick Broadcasting*, a 1992 decision of the Supreme Court of Canada, it was found that the privileges of members of the Nova Scotia House of Assembly allowed them to exclude filming of proceedings by the broadcasting corporation with its own cameras. The majority held that the Charter rights of freedom of the press and freedom of expression did not apply, as members were exercising their inherent privilege of determining whether or not filming could proceed. However, this was not how both Justices Sopinka and Cory saw the same situation. Both determined that this exercise of privilege is subject to Charter scrutiny. Mr. Justice Cory went so far as to decide that the actions of the House of Assembly exceeded the jurisdiction inherent in parliamentary privilege and that the Charter rights trumped privilege in this instance.

Then, in 1996, the Supreme Court of Canada in *Harvey v. New Brunswick* dealt with the issue of disqualification from office, which, it determined, fell within the historical privilege of the legislature and was immune from judicial review. It held that parliamentary privilege in this instance enjoyed constitutional status and was not subject to the Charter.

However, in arriving at the decision, justices took several routes. Then Chief Justice Antonio Lamer quoted from his earlier reasons in the *New Brunswick Broadcasting* case as follows:

The legislation that the provinces have enacted with respect to privileges will be reviewable under the *Charter* as is all other legislation.

In the case at hand, he felt that the Charter did not apply and did not have to decide the priority between the Charter and the ancient law of privilege. Applying this reasoning to Bill C-34, we would be faced with the courts reviewing the exercise of our privileges because the ethics officer is statute based.

Madam Justice McLachlin, now Chief Justice, in her reasons, dealt with both the Charter and parliamentary privilege. She said they were both "constitutional principles of fundamental importance." She said:

Our object should be to reconcile them in such a way as will preserve both meaningful legislative privilege as well as the fundamental democratic values guaranteed by the *Charter*.

She went on to say the following:

To prevent abuses cloaked in the guise of privilege from trumping legitimate *Charter* interests, the courts must inquire into the legitimacy of a claim of parliamentary privilege.

Again, I would argue that the Supreme Court sees a legitimate role for itself in scrutinizing the exercise of privilege, especially if the privilege is exercised pursuant to a statute. That is the key line. The Supreme Court feels it is invited to scrutinize the exercise of our privileges, particularly so if that privilege is based on a statute.

If the case of *Tafler v. Hughes (Commissioner of Conflict of Interest)*, the British Columbia Court of Appeal found that the law of privilege governed, but there were no Charter arguments raised.

The same situation arises in the case of *Morin v. Anne Crawford, Conflict of Interest Commissioner for the Northwest Territories*, a decision of the Supreme Court in the Northwest Territories. Here, the court held that the powers exercised by the Conflict of Interest Commissioner were within the ambit of privilege enjoyed by the legislative assembly, and, as such, the court had no jurisdiction to entertain a judicial review application brought by the aggrieved Mr. Morin. As no Charter issues were raised, no competing claims against the application of privilege, the court followed the *Tafler* decision and did not interfere with the exercise of power by the commissioner.

Contrast the decision in these cases with the two most recent decisions dealing with privilege. In the *Vaid* case, a decision of the Federal Court, the relationship between parliamentary privilege, the courts, human rights legislation, and the Charter was discussed at some length and, indeed, is still being discussed. In this case, the respondent Vaid claimed his rights under the Charter and the Canadian Human Rights Act had been violated. The appellant, Speaker of the House of Commons, argued that privilege extended to the conduct and management of the staff of the House of Commons. The court held that privilege did not apply. The court held that the privilege claimed was not necessary to the dignity, integrity or efficient functioning of the legislature. Alternatively, the privilege claimed did not preclude a review of the necessity to possess and exercise the privilege where there is an allegation of discrimination contrary to the Charter or the Canadian Human Rights Act.

Therefore, there is a distinct possibility that when privilege competes against Charter and Human Rights Act provisions, the claim of privilege will be strictly scrutinized by the courts.

However, the decision that gives us the best reason to pause on the issue of privilege is that of the Supreme Court of the Northwest Territories in the *Roberts* case, a case decided last summer. The facts here are important in that they deal with the attempted removal by the Conflict of Interest Commissioner, who was appointed by a statute with provisions similar to those contained in our own Bill C-34. The assembly claimed its decision to remove the commissioner was protected by privilege, which was the main argument made by Senator Carstairs in her October 7 speech. The court held otherwise, stating the following:

The Legislative Assembly has chosen to circumscribe its area of privilege by statute...

Does the decision in this case, combined with other decisions and minority opinions in Supreme Court decisions, start us down a slippery slope to the point where the actions of a statute-based appointee are not protected by privilege? The judge in this case, who also decided the *Morin* case, said, no.

• (1520)

Honourable senators, here we have a case where the court is quite willing to second-guess the decision of a legislature, stating that privilege can be inadvertently circumscribed by statute, even inadvertently. Surely, the evidence of the witnesses before the Rules Committee, the experience of the House of Lords and the contradictory statements by Canadian courts on the extent of privilege should act for us as a counsel of caution. Surely, we can envisage the appointment, removal or exercise of authority by the Senate ethics officer as being challenged on Charter or constitutional grounds. Surely, we do not want to establish a situation where our privileges are subject to the whim of the courts.

This, honourable senators, can and should be avoided. It can be avoided by establishing the position of ethics officer in our own rules in a fashion similar to that accomplished by the House of Lords.

I thank honourable senators for their attention.

**Hon. Lorna Milne:** Will the Honourable Senator Oliver accept a question?

**Senator Oliver:** Yes, honourable senators.

**Senator Milne:** In the decision of the B.C. Court of Appeal in *Tafler v. Hughes*, Mr. Justice Lambert stated:

In my opinion, the privileges of the Legislative Assembly extend to the Commissioner who is expressly made an officer of the Assembly by sub-section 10(1) of the Members' Conflict of Interest Act. In my opinion, decisions made by the Commissioner in the carrying out of the Commissioner's powers under the Act are decisions made within, and with respect to, the privileges of the Legislative Assembly and are not reviewable in the courts.

Is it the contention of the honourable senator that the courts will ignore this clear interpretation of a similar statute in the B.C. Court of Appeal?

**Senator Oliver:** Honourable senators, it is certainly not the Supreme Court of Canada. We know very well the clear position of the Chief Justice of the Supreme Court of Canada. We know very clearly the position of Mr. Justice Cory and other judges of the Supreme Court of Canada.

The Supreme Court of Canada is the court of highest authority in Canada, not a court of a particular province.

**Senator Milne:** Senator Oliver is right, it is not the Supreme Court of Canada. However, in the decision of the Supreme Court of Canada in *Harvey v. New Brunswick*, Chief Justice McLachlin stated:

The history of the prerogative of Parliament and legislative assemblies to maintain the integrity of their

processes by disciplining, purging and disqualifying those who abuse them is as old as Parliament itself. Erskine May, writing in 1863, stated this in his *Treatise on the Law, Privileges, Proceedings, and Usage of Parliament*.

Is the honourable senator suggesting that, perhaps, the Chief Justice is likely to change her mind on this issue?

**Senator Oliver:** That is not her only pronouncement on the issue of privilege. As the honourable senator is well aware, a number of professors who appeared before the committee chaired by Senator Milne quoted a number of authorities in the Supreme Court of Canada, in particular, Chief Justice McLachlin where she made her position abundantly clear. She feels that whenever there is a Charter issue, an issue under the Human Rights Act and an issue also arising from the privileges of a member of a legislature or of Parliament, then those privileges are trumped and that the Charter and human rights legislation prevail.

That is the reason for my concern. Her position is very clear — parliamentary privileges are ancient, they had a lot of significance in the olden days and they have less so now. That is because before 1982 we did not have a Charter. A number of court decisions indicate that the Charter prevails.

**Senator Milne:** The present Chief Justice also noted in *Harvey*:

Parliament and the legislatures of Canada are not confined to regulating procedure within their own chambers, but also have the power to impose rules and sanctions pertaining to transgressions committed outside their chambers.

Later, she stated:

The power of Parliament and the legislatures to regulate their procedures both inside and outside the legislative chamber arises from the *Constitution Act, 1867*. The preamble to the *Constitution Act, 1867* affirms a parliamentary system of government, incorporating into the Canadian Constitution the right of Parliament and the legislatures to regulate their own affairs. The preamble also incorporates the notion of the separation of powers, inherent in British parliamentary democracy, which precludes the courts from trenching on the internal affairs of the other branches of government.

What leads the honourable senator to believe that the courts will in any way try to upset this balance?

**Senator Oliver:** Nothing is clearer than the language of the Chief Justice herself. She said, and I repeat:

To prevent abuses cloaked in the guise of privilege from trumping *Charter* interests, the courts must inquire into the legitimacy of a claim of parliamentary privilege.



The Chief Justice is stating that whenever an issue comes before the court in which the privileges of legislators or parliamentarians arise, and there is also a competing claim, perhaps under the Charter of Rights and Freedoms or under human rights legislation and it is there by virtue of statute, they will not hesitate to look at it, and that the privileges are trumped by the higher rights under the Charter and the Human Rights Act.

If we are interested in trying any longer to protect the privileges of Parliament, it seems to me that we, therefore, have an obligation to do so in a way that confines to this chamber our right and our ability to control the definition and scope of these privileges and define them ourselves.

**Hon. Jeremiah S. Grafstein:** Honourable senators, I commend Senator Oliver for his comprehensive statement, which is consistent with what is set out in the Oliver-Milliken report.

I take it that the Honourable Senator Oliver, in conjunction with Mr. Milliken, spent a considerable amount of time studying this question.

**Senator Oliver:** Yes, we did.

**Senator Grafstein:** I take it as well that the government ignored your recommendation on this point.

**Senator Oliver:** In 1997, the report was tabled in the House of Commons and the Senate. Parliament then prorogued. Thus, it died with the prorogation.

The fact that there is not a provision in Bill C-34 to have the commissioner appointed by joint resolution, or by resolution of each House, means that that part was in fact ignored, notwithstanding the study we had given it.

**Senator Grafstein:** I take it, then, the government ignored the recommendation, insofar as it applies to this chamber, and that rules should prevail in terms of dealing with this issue as opposed to following a statutory route. Is that so?

**Senator Oliver:** That is correct.

**Hon. Anne C. Cools:** Honourable senators, I would like to thank Senator Oliver for his broad review of the situation. I want to question him as to whether or not he has reviewed other related matters.

From the substance of what Senator Oliver has said, it is clear to me that he is aware of the movement afoot in the courts and elsewhere, in particular the cabinet, to limit the privileges of Parliament primarily to freedom of speech, supposedly, on the forces at work in the executive to reduce the privileges of Parliament, the law of Parliament, to nothing other than a set of mechanical rules, such as setting out the amount of time a senator can speak, when really the privileges are about the ancient and grand law of Parliament.

• (1530)

I am impressed that Senator Oliver is aware of those war drums that are beating. For example, I recently reviewed a list of the privileges of Parliament. One never sees, for example, the privilege of being representatives. After all, to debate, to consider, to represent the Queen's subjects is certainly the first privilege. It takes an extraordinary step of naiveté to believe that anyone can create these bureaucracies within Parliament and that these issues will not come into collision.

Senator Oliver has done an extensive review of the judgments in the case. Could he tell the Senate about the case in which the *Ottawa Citizen*, *Southam*, I believe it was, sued the Senate? In the court of first instance, the case was heard by Mr. Justice Strayer. In his judgment, Mr. Justice Strayer did not bow and scrape before the privileges of the Senate or of Parliament, as Senator Milne is suggesting that judges do. He had quite a bit to say. In appeal the matter went before Mr. Justice Iacobucci, I believe. Has Senator Oliver looked at those judgments? Those two judgments, particularly that of Mr. Justice Strayer, are a sound indication of where certain members of the judiciary want to go with privileges. If Senator Oliver has not reviewed those, I will understand, because no one has yet mentioned them.

As a subsidiary to my question, yes, everyone cites *Donahoe*, and Senator Oliver rightly referred to the opinions of Mr. Justice Sopinka, and I believe it was Mr. Justice Cory, who stated in their judgments that the privileges of Parliament were very much subject to the Charter of Rights. That was the disagreement between the two sets of Supreme Court of Canada judges.

The important point here, honourable senators, and the fact of the matter is that in *Donahoe* the opposite opinion was prevailing right up to the final court. In the courts of first and second instance, they did not uphold our privileges. It was at the Supreme Court that the privileges of Parliament were upheld, with Madam Justice McLachlin taking the lead, even though some Supreme Court judges disagreed.

Therefore, the matter of our privileges is not safe and sound at all, and I think that this kind of legislation, Bill C-34, is folly and unwise. I do not understand how we can allow ourselves to be placed in this position because the real question at the end of the day is the proper relationship between the high court of Parliament and the lower courts, especially the Supreme Court of Canada, which was created by a statute of the high court of Parliament. Some of the subject matter is growing not only arcane but also increasingly less known to members of Parliament, and that is a terrible situation.

Could Senator Oliver comment on the fact that in the *Donahoe* case the opinion that nearly prevailed was the opinion that did not uphold our privileges?

The fact of the matter is that the privileges of Parliament won out, but just barely. Anyone who says that the courts are strongly upholding and defending the privileges of Parliament is not entirely accurate. It takes a fair amount of reading between the lines.

Could the honourable senator comment on those two matters?

**The Hon. the Speaker:** I wish to remind honourable senators that there are about four minutes remaining of Honourable Senator Oliver's time and I have one other questioner.

**Senator Oliver:** First, I have not read the *Southam* case.

I do know that since 1982, with the Charter, we are now seeing in the courts, more than at any time since 1867, great new judicial activism. As a result of that activism, it is my opinion that it would be prudent for this chamber to protect the long standing privileges of this house by doing what it can to ensure that judicial activism does not take over and control and define them.

**Hon. Richard H. Kroft:** Honourable senators, from reading all the cases, I find it would take incredible naïveté to think that the courts are not looking for every possible opportunity to intrude on privilege. One would have to have a strange way of reading not to find that obvious in the judgments.

Would the honourable senator not agree that we should not put all our weight and reliance only on the point of court intervention? The honourable senator repeated one portion of his speech for emphasis, that being the positive value of having this chamber in control of its own rules and proceedings. I understood the honourable senator to mean, and I would like him to affirm it from his long experience with this subject, that the potential for court intervention is in itself a positive value to which this chamber should pay a great deal of attention in considering this legislation.

**Senator Oliver:** I agree entirely with Senator Kroft and I cannot state it better than he just did. This chamber must be the master of its own destiny and all that comes before it. There is no need for us, in keeping with the traditions of parliamentary privilege, to extend it to the courts or to any other group. It has been a long-standing tradition in terms of the definition of our privileges, so I could not agree more.

**Hon. Marcel Prud'homme:** Honourable senators, I would like to thank Senator Carstairs for having referred to some of us as the elders. I worked on the subject so many years ago that I cannot remember today when it was, along with Senator Stanbury and Mr. Blenkarn from the House of Commons. The matter died out because of elections.

One of my most important requirements, if we were to have that kind of system, was that we ensure that whoever was appointed be perfectly bilingual, since very private matters would be discussed with that person. Does Senator Oliver share the opinion that, regardless of the ethnic origin of the candidate, members must be at ease with the person who is ensuring that we abide by the rules?

**Senator Oliver:** I thank the honourable senator for his question.

It is a prerequisite that anyone who should be appointed pursuant to section 20.1 of the Parliament of Canada Act under the Great Seal, after consultation with the leader of every recognized party in the Senate and after approval of the appointment by resolution of the Senate, be bilingual.

• (1540)

**Senator Prud'homme:** Another very short question. I will not make any speech on this subject. One thing that always troubled me in the House of Commons — and it should be troubling to honourable senators — is when we speak vaguely, “with consultation with opposition leaders.” I have always disagreed with that. I always try and always fail, but I will try again and again to say “after consultation and approval.” I have seen rather quick consultations done over my 40 years. The consultation often just involved a telephone call. Let us say Senator Tkachuk is the leader of a new party and that he is being called by the Prime Minister —

**Senator Oliver:** Do you know something we do not?

**Senator Prud'homme:** I used him as an example because he was listening to me. Let us imagine that the Prime Minister said to Senator Tkachuk, “I want to inform you that Senator Nolin will be appointed to such and such a position.” The Prime Minister, therefore, could say to the House that he consulted with Senator Tkachuk. I have always objected to that, even though I have great respect for the deputy chair of the Banking Committee.

Do honourable senators not believe that ultimately we will have to reflect on the definition of “consultation”? There should be more than consultation in appointing individuals to such sensitive, high positions as officers of Parliament. If you use the word “approval,” then there could be a boycott. However, there should be more than simple consultation, because that has never been defined for every officer. I can quote many different officers who were appointed after consultation that was very brief and short — like it or not, that was it.

Does the honourable senator have any opinions on this matter?

**Senator Oliver:** It seems that there are five positions or bodies for which there must be consultation today, such as the privacy commissioner, the chief electoral officer and so on.

I do know from practical experience that there was consultation on two occasions on the appointment of a chief electoral officer and it was a genuine consultation. In the past it has worked.

On motion of Senator Joyal, debate adjourned.

[Translation]

## PUBLIC SERVICE MODERNIZATION BILL

THIRD READING—MOTIONS IN AMENDMENT—  
DEBATE CONTINUED—VOTE DEFERRED

On the Order:

Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Harb, for the third reading of Bill C-25, to modernize employment and labour relations in the public service and to amend the Financial Administration Act and the Canadian Centre for Management Development Act and to make consequential amendments to other Acts,



And on the motion in amendment of the Honourable Senator Beaudoin, seconded by the Honourable Senator Comeau, that the Bill be not now read a third time but that it be amended in clause 12, on page 126, by replacing lines 8 to 12 with the following:

**"30. (1)** Appointments by the Commission to or from within the public service shall be free from political influence and shall be made on the basis of merit by competition or by such other process of personnel selection designed to establish the relative merit of candidates as the Commission considers is in the best interests of the public service.

(1.1) Despite subsection (1), an appointment may be made on the basis of individual merit in the circumstances prescribed by the regulations of the Commission.

(2) An appointment is made on the basis of individual",

And on the sub-amendment of the Honourable Senator Di Nino, seconded by the Honourable Senator Nolin, that the motion in amendment be amended

(a) by replacing the words "on page 126, by replacing lines 8 to 12" with the following:

"(a) on page 126, by replacing lines 8 to 11";

(b) by adding after the words "free from political influence" the following:

"and bureaucratic patronage"; and

(c) by replacing the words "of the Commission. (2) An appointment is made on the basis of individual" with the following:

"of the Commission."; and

(b) on page 127, by adding after line 9 the following:

**"(3)** The qualifications referred to in paragraph 30(2)(a) and subparagraphs 30(2)(b)(i), and any qualification standards referred to in subsection (1), that are established for an appointment in respect of a particular position or class of positions shall apply to future appointments in respect of that position or class of positions, unless any change established by the deputy head or employer to the qualifications or qualification standards, as the case may be, is approved by the Public Service Commission."

**Hon. Pierre Claude Nolin:** Honourable senators, I will try to be brief and specific. First, I want to thank Senator Beaudoin for his amendment, the aim of which is to strengthen and reinforce the principles of this bill.

I would also like to thank Senator Di Nino for his sub-amendment, which is designed to prevent public service managers from tailoring job descriptions to the desired candidate when a competition is posted.

Honourable senators, if I understand Senator Di Nino's sub-amendment correctly, it is a question of preventing this type of practice and ensuring that competitions are impartial and respect the principles in this bill.

[English]

The government would have us believe that there will never again be another manager like the former privacy commissioner. We cannot assume that the personal hell lived by employees of that office will never again be experienced anywhere in the government.

[Translation]

Some honourable senators spoke to Bill C-25 when it was being studied and tried to convince us that amendments were not necessary since public service managers would respect the spirit of the bill.

I will draw a parallel that some might consider shaky. The vast majority of Canadians respect the values set out in the Criminal Code. Unfortunately, a few thousand of them do not respect these values and every year they commit one offence or another.

That does not mean Canadians are criminals. Despite our efforts, there will always be people who will go against the wishes of the majority. Similarly, most public servants are going to comply with the bill but, unfortunately, a handful will not. Senator Di Nino's sub-amendment is designed to prevent this type of practice.

[English]

Let me stress that I am talking about the handful of people who do not think that the rules apply to them. Most public servants at all levels are decent and honourable people. The few that are not can create, on the other hand, no end of problems for those around them. However, this bill is written on the assumption that all managers will always behave, because they must always live with the consequences of all of their actions.

Perhaps they must live with the consequences of their actions, but only if they are caught. Nobody ever expects to be caught.

[Translation]

Obviously managers who ignore the principles of this bill will do so because they are sure they will not get caught.

[English]

Even when the few that do go astray are caught, heads rarely roll. The fact is that the former privacy commissioner was not acting alone. That is one of the problems. He was acting with the cooperation of his senior management team. He was acting in spite of the fact that both Treasury Board and the Public Service Commission knew there were problems.

• (1550)

Can you imagine what will happen when the controls that do exist are weakened?

I should like to share with honourable senators a letter that appeared in *The Ottawa Citizen* on Friday, October 3, 2003, from Mr. Chris Rogers, president of the Public Service Alliance of Canada local at the National Library and Archives. He writes:

The recent revelations of what staff of the Office of the Privacy Commissioner rightly refer to as George Radwanski's "reign of terror" should be a wake-up call. Under the proposed Public Service Reform Act, Mr. Radwanski's abuses, as reported by the auditor general's office — cronyism, favouritism, extravagance, abuse of authority and misuse of the taxpayers' money — will be repeated a thousandfold.

Managers will be far less accountable in their staffing actions, and the right of employees to appeal appointments will be greatly reduced. The so-called "merit principle," which is supposed to govern staffing in the public service, has been seriously eroded in recent years. The proposed legislation reforming the public service will only make the situation far worse. It should be scrapped.

Why has the government ignored a number of positive recommendations in the Fryer Report, which examined many aspects of the public service and concluded that redress mechanisms need to be implemented to protect some basic rights of government workers?

[Translation]

Honourable senators, public servants, who work for the Government of Canada, and their union representatives, are asking for our help. They are looking to us.

[English]

The current government is setting a time bomb that will likely blow up toward the end of the next government's first mandate.

[Translation]

Some senators opposite actively support Paul Martin, our future prime minister.

[English]

Several senators opposite are known to be strong supporters of Mr. Martin. They may want to call him tonight or this afternoon to say: "Paul, three years from now we could have Radwanski style headlines every other day. Do you have a problem with that?" If the answer is yes, and it should be yes, then they may want to say yes to both the amendment and the sub-amendment.

**The Hon. the Speaker:** Is the house ready for the question on the sub-amendment of Senator Di Nino?

**Some Hon. Senators:** Question!

[ Senator Nolin ]

**The Hon. the Speaker:** Will those honourable senators in favour of the sub-amendment please say "yea"?

**Some Hon. Senators:** Yea.

**The Hon. the Speaker:** Will those honourable senators opposed to the sub-amendment please say "nay"?

**Some Hon. Senators:** Nay.

**The Hon. the Speaker:** I believe the "nays" have it.

*And two honourable senators having risen:*

**The Hon. the Speaker:** Call in the senators.

**Hon. Terry Stratton:** Honourable senators, I would like to defer the vote until 3:30 p.m. tomorrow.

**Hon. Bill Rompkey:** If there is agreement, we could include this vote at 5:30 p.m. with the other vote, which would make it simple for all honourable senators.

**Senator Stratton:** I wish to defer the vote to 3:30 p.m. tomorrow with a half-hour bell.

**The Hon. the Speaker:** Is it agreed, honourable senators, that the vote will be at 3:30 p.m. tomorrow with a half-hour bell?

**Hon. Senators:** Agreed.

## AMENDMENTS AND CORRECTIONS BILL, 2003

### POINT OF ORDER

On the Order:

Second reading of Bill C-41, to amend certain Acts.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I rise on a point of order based on a technical matter that I think is important. The long title of the bill is not at all indicative of the content or the nature of the bill. The long title, "An Act to amend certain Acts," is meaningless and misleading, so much so that Bill C-41 cannot proceed at this time. A long title is meant to indicate as clearly as possible the intent of the proposed legislation. No less an authority than Beauchesne's 6th Edition, citation 626(2) states:

Some of the constituent parts of a bill are essential, some are optional. The title is an essential part, the preamble is not.

The reason behind this is clear. Anyone following legislation must, by reading the title of a bill, be able to determine its purpose and act accordingly. Bill C-41's title violates this basic procedure. I will quote Beauchesne's again, citation 627(1):

...The long title sets out in general terms the purpose of the bill. It should cover everything in the bill.



I will repeat that because it is an important point: "It should cover everything in the bill."

This requirement is reiterated in Erskine May, Twenty-second Edition, page 462. The long title of Bill C-41 does not fulfil this basic requirement. All we know from the long title of this bill is that it will amend certain acts, none of which are specified.

Ironically, honourable senators, on February 10, 2000, the Government House Leader and sponsor of the bill in the other place said the following in response to a point of order on the title of the clarity bill:

The reference here is that if we have a bill that amends an existing law it must state in it which existing law it amends. Therefore, if we did not have that, there would be no way of reconciling the bill with the statute to which it will be later appended.

In this case, there is not a hint in the long title of which existing laws are being amended. There is not even a suggestion as to the unifying theme that connects the amendments or the acts being amended, for as Beauchesne also says in citation 626:

...there should be a theme of relevancy amongst the contents of a bill. They must be relevant to and subject to the umbrella which is raised by the terminology of the long title of the bill.

On May 6, 1971, the Deputy Speaker in the other place confirmed this point in a ruling in which he said:

It is, of course, a matter of judgment in each case as to when a bill offends to the point that it should be ruled as unacceptable because it contains disparate matters.

With the long title of this bill, the government has discarded centuries of established procedure in one fell swoop. In short the long title of this bill being defective, the bill cannot proceed to second reading until it is amended to conform with long-accepted procedure.

Beauchesne also notes in citation 627 that the long title may be amended if amendments to the bill make it necessary. However, Beauchesne does not appear to have contemplated the possibility that a bill would arrive before the chamber in such a pitiful form that it would require repairs before any amendments were proposed.

Let me quote former Speaker Sauvé from her ruling on July 30, 1982, in the *Debates of the House of Commons*:

The long title sets out, in general terms, the purposes of the bill and should be amended only if and when amendments of substance are made to the bill which would necessitate as a consequence changes to that title. For the benefit of the honourable member, I refer him to

page 465 of May's which reads in part: "Both the long title and the short title are amended, if amendments to the bill make it necessary."

Mr. Elmer Driedger, a former Deputy Minister of Justice, Professor of Law at the University of Ottawa and a leading authority on legislation, in his book *The Composition of Legislation, Legislative Forms and Precedents*, wrote:

A long title is now an indispensable part of a bill or a statute.

...The title, therefore, must accurately define the scope of the bill, and an amendment is out of order unless it falls within the scope as defined in the title.

Therefore, an amendment dealing with any statute of Canada could be introduced to Bill C-41 because the title is so vague. Is this the government's intention?

In addition to the long title of the bill being so vague as to be virtually meaningless, it seriously misrepresents its actual content. Bill C-41 includes a provision which, in fact, is not an amendment to any act. I would draw the attention of His Honour, to clause 28, which proposes a significant alteration to the Consular Fees (Specialized Services) Regulations. This clause has absolutely nothing to do with amending an act. There is not a word — not even the vaguest hint — in the long title of the bill of amendments to regulations. The consequence is that only the drafters and sharp-eyed legislators would have any reason to be aware, or even to suspect, that this particular amendment is in the bill. This is wrong and certainly procedurally unacceptable.

• (1600)

It has been pointed out in this chamber that it is essential that the public have a clear opportunity to raise concerns about any legislation being considered by Parliament. They can only do so at the outset if a title is clear and complete. Elmer Driedger, in his book, *A Manual of Instructions for Legislative and Legal Writing*, writes:

The law is necessarily complicated. The challenge to draftsmen is not to simplify the law into short dos and don'ts; that cannot be done. The challenge is to make the law more presentable and comprehensible. That can to a large extent be done by language alone...

The language used in the long title of this bill does not give anyone any sense of what is being amended or corrected. Not only that, it actually misleads the reader as to the contents of the bill. The summary of this bill states that the bill amends and makes corrections to certain laws of Canada, but what laws?

In recent memory, I cannot think of one bill that has been before this chamber that has provided so little information about its purpose. Even a bill brought in under the rubric of "miscellaneous statute law amendments" specifies that it is to correct anomalies, inconsistencies and errors and to deal with other matters of a non-controversial and uncomplicated nature.

The government claims that a similar bill was introduced in 2001 to correct a variety of statutes. We looked for this similar bill, and the closest we could find is Bill C-43, to amend certain acts and instruments and to appeal the Fisheries Prices Support Act. At least this bill noted that it was repealing an act and amending other acts and instruments.

In fact, verifications were made throughout the Commonwealth to find a similar bill using this form, and we have failed to find one single example. This is not a miscellaneous statute amendment bill where clear guidelines are available for all senators to review.

In addition, Bill C-41 has a Royal Recommendation attached which, in itself, carries an implication that there are matters contained within that go beyond the merely technical.

Your Honour, Bill C-41 is out of order, as it does not conform to any established drafting rules insofar as the long title is concerned. I would quote Erskine May, 22nd edition, to answer the question of what is to be done:

Where the title of the bill as presented to the House refers to purposes which are found not to be mentioned in the clauses of the bill submitted for publication, the proper course is to withdraw the original bill and present a new one with an appropriate long title.

This bill has two difficulties with its long title. First, it has the reverse problem in that the title is completely lacking in informative value. Second, it also has purposes not mentioned in the long title, notably changes to regulations. The proper course is for the government to withdraw this bill, and in doing so, one would hope that new bills to accomplish the same purposes would not be presented in an omnibus form, as was this one, and that they would have accurate long titles.

In the preparation of your ruling, Your Honour, I urge you to consider the long title of Bill C-36, which is presently on the Order Paper in the other place. That bill has 57 clauses in 21 pages and calls for the merger of the National Library with the National Archives. Two of the 57 clauses have nothing to do with a merger, but are proposed amendments to the Copyright Act, and the long title reflects this. Bill C-36 is long titled: "An act to establish the Library and Archives of Canada, to amend the Copyright Act and to amend certain Acts in consequence." One can question why amendments to the Copyright Act are included with a subject matter completely foreign to it, but that is a debate for another day. The point is that the long title indicates its provisions. Had these amendments been included in Bill C-41, however, they may well have gone largely unnoticed, emphasizing again the necessity to have a descriptive long title and not a meaningless and misleading one, as we have with Bill C-41.

For these reasons, I urge you, Your Honour, to confirm that the Senate cannot begin second reading debate on this bill.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I rise today to speak to Senator Lynch-Staunton's point of order. He is obviously correct when he says that Bill C-41 is

entitled, "An Act to amend certain Acts." The very fact that it indicates that it is a bill to amend certain acts would obviously lead a judicious reader to the table of provisions which indicates the short title, and each of the acts that the bill purports to amend. Those acts are listed as follows:

Amendments to the *Canada Customs and Revenue Agency Act*  
 Amendments to the *Customs Act*  
 Amendments to the *Financial Administration Act*  
 Amendment to the *Importation of Intoxicating Liquors Act*  
 Amendments to the *Lieutenant Governors Superannuation Act*  
 Amendment to the *Modernization of Benefits and Obligations Act*  
 Amendments to the *National Round Table on the Environment and the Economy Act*  
*Parliament of Canada Act*: retroactive coming into force  
 Amendment to the *Salaries Act*  
 Amendments to the *Supplementary Retirement Benefits Act*

Consular Fees (Specialized Services) Regulations

Retroactive coming into force

Coordinating amendments

*Lieutenant Governors Superannuation Act*  
 Bill C-25

Then it moves on to "Coming into force."

Any judicious reader of a bill which says "an act to amend certain acts" would turn to the table of provisions to identify those acts.

In addition, honourable senators, we recently had two sets of bills which were similar in nature to Bill C-41. Some of those bills are called "Miscellaneous Statute Law Amendment Acts," which again do not in the title indicate all of the miscellaneous statutes that would be amended by the particular bill.

We have had some discussion of Miscellaneous Statute Law Amendment Acts in this chamber because it was our understanding that these proposed amendments would be totally non-controversial in nature. Often, our Legal and Constitutional Affairs Committee has carefully examined these bills in advance and, if they identified any provisions which they thought to be confrontational or of a nature that would require a great deal of debate, they would inform the government of such and those particular provisions would be removed from the bill. The bill would then be submitted with only those provisions that were considered non-controversial in nature.

The bill which resulted from that process, became known as a technical corrections bill. In fact, Bill C-41 is a technical corrections bill. It is a bill to amend certain acts, but because it is not a Miscellaneous Statute Law Amendment Act, it would, by its very nature, contain some controversial portions.



There is no authority, I would suggest, Your Honour, for the assertion that the title must be relevant to each and every clause, and there is no authority for the assertion that the title must elaborate on each and every clause, and there is no precedent or authority to sustain, in my view, the alleged point of order.

**Senator Lynch-Staunton:** It is not an alleged point of order. It may, in fact, be sustained.

• (1610)

**Hon. Anne C. Cools:** Honourable senators, we seem to be in a most artificial situation whereby, as a country and as a Parliament, we are expecting a change in leadership in the next little while and a new Prime Minister. The agenda of Parliament should have been slowed down and made to accommodate the fact that these political events are occurring. Historically, we used to have situations, leading up to leadership conventions whereby the parliamentary agenda would slow down. What we have here is an extremely heavy and increasingly packed legislative agenda. I would submit that, somehow or the other, this is causing some of the problems.

Honourable senators, in all sincerity, and as a person who has done a lot of canvassing — and, I have run in elections and have done everything that can possibly be done — usually three weeks before a leadership convention Parliament tries to release its members to pursue their politics in the ridings, to get support from delegates and to build support for the new leader at the convention. Here, however, we are in a contrary situation, which is very unusual. We have an overburdened, slavish agenda where closure or time allocation is being invoked and pressure is on members of Parliament to vote early and fast and get it done. That is a peculiarity in this particular Parliament. Perhaps that is the reason why these bills are coming faster, are being hastily written, improperly conceived and so on. I do not know.

What I do know, honourable senators, is that there is a great deal of authority that bills are supposed to take a particular form. We must remember that that authority has a long and ancient history which has evolved over several hundreds of years. There was a time when bills were sort of an amorphous piece of paper with much written on it — usually petitions, grievances and the redresses which were granted. Over a couple of hundred years or so, bills have essentially taken the form that you see them in today. These forms are not to be taken lightly.

Today, we have a well-established tradition regarding the designated form of bills, as Senator Lynch-Staunton has pointed out; for example, title, preamble, enacting clause, clauses or provisions, and so on. I do not think that anyone can say that we do not have a right to expect bills in this form. Beauchesne's tells us, in citation 627, under the subject matter "Long Title," the following:

The long title sets out in general terms of purposes of the bill. It should cover everything in the bill.

It would be hard to argue that the title of Bill C-41 covers everything in the bill. However the real point is one of my hobby horses, and I am really grateful to Senator Lynch-Staunton for raising it. How we do business in these houses is part of the grand and ancient law of Parliament. The funny thing about bills is that a bill is a peculiar parliamentary instrument. In addition, it is a joint instrument that is shared by the joint law of Parliament. That is, it takes the House of Commons, the Senate of Canada and Her Majesty the Queen at the end to bring about an act. A bill, after all, is an incipient act. This is where there is so much difficulty, because basically a bill is a draft act.

Honourable senators, the propositions and the suppositions by which bills move through the two chambers are part of a shared ancestry and part of a shared law. It is a curious thing that although each House of Parliament is an independent body and master of its own proceedings they are both masters of their own proceedings under one joint law, which is called the law of Parliament. To that extent, Senator Lynch-Staunton is absolutely right and there is a valid point of order.

We must remember that it is not good enough to say, "This bill came here to us from the House of Commons and it says "passed." I submit to honourable senators that this Senate chamber has the duty, at all times, to ensure, review and study and, to use the words of Senator Carstairs, be judicious readers. We have a duty to be judicious readers and to make sure, at all times, that the House of Commons, in sending us bills for consideration, is not unilaterally amending the ancient laws of Parliament at the same time or is not attempting to bind us to sloppy practice or incomplete or unconstitutional practices. I do not know why this bill is proceeding in this way. I do not know much about the substance of the bill itself, but I do know that legislative drafters and parliamentarians are supposed to pay extra attention and care in the production of omnibus bills or bills that are purporting to amend several acts.

Therefore, I would submit, honourable senators, that there is no parliamentary body outside of us that can stand and say, "The House of Commons did not act properly or that the Senate did not act properly." To the extent that there is a shared law and a shared Constitution between the two of them, each House has the duty to ensure that the other house is respecting the first house's or the second house's proper constitutional role and is attempting to abide by the constitutional practices that govern how bills are produced, how bills are passed in each chamber and, most important of all, the form, communication and substance they take.

Honourable senators, I submit that there is some basis to Senator Lynch-Staunton's point of order and that this chamber should be diligent and vigilant about the bills it receives for consideration and, quite frankly, the claims about bills that are quite often made. We are no longer in an era where bills are read page by page as they used to be. Sometimes we are asked to adopt bills at first reading when there is not even a bill before us.

Honourable senators — and, especially His Honour — I think this chamber and the members of this chamber should take their work very seriously.

**Senator Carstairs:** Honourable senators, I want to add one piece of information, and it is short. In the last session we dealt with Bill C-40. That bill's description was "An Act to correct certain anomalies, inconsistencies and errors and to deal with other matters of a non-controversial and uncomplicated nature in the Statutes of Canada and to repeal certain provisions that have expired, lapsed or otherwise ceased to have effect." That bill went on to amend 37 statutes, and none of them were identified in the title.

**Senator Lynch-Staunton:** Honourable senators, the description was sufficient enough that one could understand what was intended. Second, there was no Royal Recommendation to that bill nor to any technical omnibus bill we get. Those can be considered technical corrections, usually of a non-controversial nature.

• (1620)

This bill has a Royal Recommendation, which means there is a public-money aspect to it. That is not a technical consideration, and should have been mentioned. It should have been highlighted.

Finally, if for no other reason, a bill identified as an act to amend certain acts does not include amending regulations. That is what this bill does. One has to search the bill to find that out. Bills are not the private preserve of experienced parliamentarians. They belong to all Canadians. All Canadians have a right to know, through the title, which they may be hearing about for the first time, exactly what that legislation intends. Reading or knowing of this title gives absolutely no indication of what is involved. Parliament owes Canadians better information than that. For those and the other reasons I have given, this point of order is valid.

**The Hon. the Speaker:** I thank Senator Lynch-Staunton and all honourable senators for their comments and advice on this point of order raised by Senator Lynch-Staunton. I shall take it under consideration and bring back a ruling to the chamber as soon as possible.

## PUBLIC SAFETY BILL, 2002

### SECOND READING—DEBATE ADJOURNED

**Hon. Sharon Carstairs (Leader of the Government)** moved the second reading of Bill C-17, to amend certain Acts of Canada, and to enact measures for implementing the Biological and Toxin Weapons Convention, in order to enhance public safety.

She said: Honourable senators, I am very pleased to speak on Bill C-17. As honourable senators well know, this bill is in

response to the terrible events of September 11, 2001, as well as the increased potential for the use of terrorism throughout the world.

Honourable senators, in addressing the potential for terrorism, we must ensure that we go far enough to protect Canada and Canadians, but we must not go so far that we unduly intrude on human rights. We must strike a careful balance between safety and security, on the one hand, and freedom and privacy, on the other.

That was certainly the focus of much of the debate over earlier versions of this bill, as well as this version, in the other place and throughout Canada. Honourable senators, I have followed that debate and I am pleased to advise that the bill before us, Bill C-17, in my view achieves this careful and proper balance.

The goal of this bill is to increase the Government of Canada's capacity to protect citizens, to prevent terrorist attacks and to respond swiftly should a significant threat arise. It enhances our ability to provide a secure environment for air travel. It facilitates data-sharing between air carriers and the federal departments and agencies responsible for transportation and national security. It allows government to issue certain interim orders in emergency situations, while ensuring proper control over government actions. It has provisions that will deter hoaxes that will endanger the public or heighten anxiety. It establishes controls over export and transfer of technology, over explosives and hazardous substances and other activities related to other dangerous substances, such as pathogens. It helps identify and prevent harmful, unauthorized use of or interference with computer systems operated by the Department of National Defence and the Canadian Forces. It deters the proliferation of biological weapons.

Honourable senators, this is a wide-ranging bill that amends 23 acts of Parliament and establishes a new act of Parliament. Today, I want to highlight a few of the 24 parts of this bill.

Part 1 refers to amendments to the Aeronautics Act. It clarifies the aviation security regulation-making authority and prohibitions related to screenings. The bill provides Transport Canada the authority to request information from air carriers or operators of airline reservation systems on specific persons or for all persons on an aircraft subject to an immediate threat. These requests could only be made for the purpose of transportation security.

The bill provides a wider authority for the RCMP and CSIS such that information could be requested from air carriers or operators of airline reservation systems on all persons on or intended to be on any identified flight. These requests could only be made for the purpose of transportation security or national security. This is a very important amendment to promote the safety of Canadians. It will give our law-enforcement and security agencies an invaluable tool to improve transportation security. I will also increase the government's capacity to prevent terrorist attacks and to respond quickly should a threat arise.



Let me briefly explain how the RCMP and CSIS data-sharing regime would work. Air carriers currently collect personal information about passengers. With this bill, air carriers would be required to share passenger information, when requested, with a small core group of specially designated RCMP and CSIS officers for the purposes of transportation and national security. Designated officers could disclose passenger information to a third party only in a limited circumstance, such as to a peace officer if there were an immediate threat of life, health or safety. Let me assure honourable senators that designated officers would only be able to access passenger information for transportation or national security purposes.

There had been criticism of the original intention of the RCMP to match all passenger data against all data files maintained by the RCMP. To ensure the privacy of law-abiding Canadians, the Privacy Commissioner recommended that the RCMP only match passenger names against names for which a match would identify a person meeting the criteria of Bill C-17.

I am pleased to advise that both the RCMP and CSIS will be implementing this request. That is, they will only match passenger names against a much smaller subset of names consisting of those persons who pose a threat to transportation or national security. For example, the RCMP will only match possible names against persons who have an outstanding national warrant as listed in the regulations.

I would emphasize that the proposed data-sharing regime would not be used to create mega-files to track the travel patterns of law-abiding Canadians. This proposal includes important safeguards to respect the privacy of Canadians. For example, all passenger information would have to be destroyed within seven days, unless it was reasonably required for the restricted purposes of transportation security or the investigation of terrorist threats. Also, the RCMP and CSIS would each be required to conduct an annual review of information retained by designated officers. If retention could no longer be justified, the information would have to be destroyed. These safeguards were included in the data-sharing regime to ensure that the privacy of Canadians is protected.

This bill would also amend the Aeronautics Act to clarify the provisions that cover requests for information from other countries. This was raised during the Senate's review of Bill C-44. Although the clarification took a while in coming, it is now here. As a result of amendments in this bill, another country will be provided with information on passengers onboard an aircraft departing from Canada or on a Canadian airline's aircraft only if the flight is scheduled to land in that country.

Another amendment to the Aeronautics Act make air rage an offence subject to a maximum fine of \$100,000 or five years in prison.

Part 7 of the bill deals with the Explosives Act amendments. The proposed amendments to that act are aimed at protecting Canada's explosives supply from criminal and terrorist interests. Proposed are new measures to control the acquisition and

possession of explosives by potential criminal or terrorist interests; to track the consumer sale of components of explosives, such as ammonium nitrate; and to introduce export and in-transit permit requirements to complement the current import-permit regime.

During debate in the other place, the government listened closely to the concerns expressed by stakeholders and committee members about the provisions related to inexplusive ammunition components, resulting in the removal of all references to those provisions from the bill.

• (1630)

These proposed new measures will result in Canada's eventual ratification of the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials, the Organization of American States convention that was signed in November of 1997. The extensive consultations that have been held with public stakeholders, federal and provincial government departments and the United States will ensure that these new security measures will not adversely impact on lawful commerce and shooting activities.

Part 8 of the bill deals with Export and Import Permits Act amendments. The Export and Import Permits Act, otherwise known as EIPA, authorizes the government to establish lists to control the import and export of specifically listed goods or articles for a variety of purposes. The Export Control List controls, in part, the export of arms, ammunition, implements or munitions of war or articles of a strategic nature or value, the use of which might be detrimental to the safety or security of Canada or its allies.

The proposed amendments of the EIPA introduce specific controls over technology, including technical data, technical assistance and information necessary for the development, production or use of military and other strategically sensitive goods listed in the Export Control List. They will also provide explicit authority to control transfers, including electronic transfers of technology listed in the ECL.

These changes respond to the need for enhanced controls over the export and electronic transfer of military and strategically sensitive technology, but these new controls will not apply to technology in the public domain, to basic scientific research or to the minimum information necessary for patent applications. The proposed amendments will also provide authority for the Minister of Foreign Affairs to consider safety and security concerns when assessing applications for permits to export or transport goods or technology. These considerations would be additional to the purposes for which the goods were originally placed under export controls.

Thus, under the authority of the proposed amendments, when accessing export permit applications the minister could consider whether the goods or technology proposed for export may be used for a purpose prejudicial to the safety or interests of the state or to the peace, security or stability in any region of the world or within any country.

The National Defence Act amendments make particular reference to reserve military judges. The bill provides for the establishment of a panel of reserve military judges. This panel would increase flexibility within the military judiciary and allow the system to respond more efficiently when demands or conflicts otherwise limit the availability of military judges. It would be comprised of reserve force officers who have previously performed judicial duties in the military justice system. The chief military judge will be able to select officers from the panel to augment the military judiciary as required. This panel would be a permanent part of the military justice system.

Bill C-17 would ensure that following a compulsory call-out of the reserves — which has not occurred in the 50 years since Korea — employers would be required to reinstate reserve members in their existing or equivalent jobs. I would note that this amendment does not reverse the government's position on voluntary employer support for reserves. Indeed, Canadian employers know well the value they get by hiring a trained member of the reserves, and they have consistently been supportive of their employees' commitment to the Canadian Forces. This amendment would simply provide a safety net in the unlikely case that a compulsory call-out was required.

Honourable senators, on another item, let me begin by noting that computer systems and networks are an integral part of the Department of National Defence's critical infrastructure, and ones that must be protected. Over the past decade, the Canadian Forces have been making increasing use of technology, particularly in military operations. While this has improved their operational effectiveness, it has also widened the scope for interference and attack. That is why, under Bill C-17, the Minister of National Defence would have the authority to authorize DND and the Canadian Forces to intercept communications passing into, from or through defence computer systems. This authority would only be given to persons who perform duties in the day-to-day protection of these systems and networks. These individuals could be authorized to intercept private communications in order to isolate or prevent harmful, unauthorized use of, interference with or damage to defence systems.

We are interested in ensuring that we can protect critical defence IT systems and networks both at home and abroad. To ensure that the proper checks and balances are in place, the Commissioner of the Communications Security Establishment is given the mandate to review the activities carried out under this authority.

The proposed amendments to the National Energy Board Act will clearly define the powers of the National Energy Board with respect to energy infrastructure security. The board currently has the mandate to regulate safety of interprovincial and international pipelines and international power lines. The amendments to the National Energy Board Act will provide the board a clear statutory basis for regulating the security of energy infrastructure under its jurisdiction. The proposed amendments would expand the National Energy Board's mandate to regulate security of installations and provide the board with a clear statutory mandate to do a number of things, such as order a pipeline company or

certificate holder for an international power line to take measures to ensure the security of the pipeline or power line; to make regulations respecting security measures; to keep security-related information confidential in its orders or proceedings; to provide advice to the Minister of Natural Resources on issues related to security of pipelines and international power lines; and to waive the requirement to publish a notice in the *Canada Gazette* for a permit to construct and operate an international power line if the board considers there is a critical shortage of electricity caused by a terrorist activity.

Finally, honourable senators, let me speak to one of the general provisions of Bill C-17 that affects the ability of the government to respond in a crisis. There has been considerable discussion about the provision for interim orders. I believe we will all agree that the very essence of democracy requires accountability when governments take emergency measures that may have an effect on existing legislation and regulations. At the same time, I doubt whether anyone disagrees that governments must have flexibility to respond quickly with interim measures to unforeseen situations.

We certainly learned on September 11, 2001, that in a crisis there may be the need to make an immediate decision in an area that had not previously received extensive analysis. On September 11, every minute and a half we had another aircraft to add to the list of those with which we were contending. We had to turn off the flow, and we had to turn it off immediately. It was not a matter to debate for an hour or so. Fortunately, the government had the authority needed to close Canadian airspace and thus turn back those aircraft that could return to Europe. The lesson was clear: An event transpired that needed an immediate decision, and we have to be ready for such possibilities in the future.

Honourable senators, an interim order can only be put into effect if, time permitting, it could be put in place as a regulation that is, the parent act must have the authority, already granted by Parliament, to make a regulation out of the interim order.

Honourable senators, let me put it another way: The only matters that can be covered by interim orders are matters for which Parliament has already given approval in the regulation making scope of the acts in question. Thus, an interim order would essentially bring into immediate force a provision that could characterize as having already received approval in principle. To ensure that there is sufficient accountability associated with this process, the bill requires that the interim order be approved by the Governor in Council within 14 days, be tabled in Parliament within 15 days, be published in the *Canada Gazette* within 23 days and be converted to a regulation within one year.

An exception to the one-year requirement is found in the interim provision in the Canadian Environmental Protection Act. That act currently provides for interim orders that may have a duration of two years. Failure of any one of these nullifies the effect of the interim order at the time of that failure.



In summary, honourable senators, we are talking of bringing forth regulations that have already been approved in principle in times of extraordinary need and with very strict conditions applied. This provision is a good example of what I referred to at the beginning of my comments as a need for balance, providing ministers with the tools to act quickly in emergencies, while putting in place the proper oversight mechanisms to ensure democratic accountability.

• (1640)

**Hon. Tommy Banks:** Honourable senators, would the Leader of the Government accept a question, even a naive one?

**Senator Carstairs:** Yes.

**Senator Banks:** Honourable senators, I have not discussed this matter with either the chair or the deputy chair of the Standing Senate Committee on National Security and Defence. However, I have just asked the deputy leader about the committee to which this bill will be referred. He has informed me that the Standing Senate Committee on National Security and Defence was designed, in effect, not to receive legislation.

During the process of the leader reading the information about the bill, I was struck by the fact that, with the exception of the references to the National Energy Board, and even in some aspects of that reference, every other matter, every other agency, every other consideration, every other aspect of this bill deals with things that the National Security and Defence Committee has been studying for the past many months and about which their members, I will say immodestly, have a considerable amount of first-hand knowledge.

There is probably not an answer to my question at the moment. However, might there be a way for some of the corporate information, if you like, that exists already in that committee, to be made available to the committee to which this bill is intended to be referred, which I understand is to be the Transport and Communications Committee?

**Senator Carstairs:** Honourable senators, I thank the honourable senator for the question. What he has suggested is an excellent idea. Obviously, the committee can apprise itself of any information that it might find valuable in its study.

However, I should point out that the bulk of the bill deals with the Aeronautics Act, which comes under the jurisdiction of the Transport and Communications Committee. That is the reason the decision was made.

However, the honourable senator has raised an interesting point. Obviously, the studies that have been done by his particular committee, chaired so ably by Senator Kenny, deal with such issues as the National Defence Act amendments. There would also be some interest in the committee that Senator Banks chairs, with respect to the National Energy Board amendments.

It was not an easy decision to make. Frankly, it was based on the fact that the vast majority of the bill deals with the Aeronautics Act.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I did not think it was the Leader of the Government who decides which committee will entertain a bill. I thought it was the Senate; but, then, here we go again.

On that note, I move the adjournment of the debate.

**Senator Carstairs:** Obviously, the senator is absolutely correct. It is the Senate that will determine to which committee the bill will be referred. However, the recommendation to the Senate will be that it be referred to the Transport Committee.

**Hon. Anne C. Cools:** Honourable senators, it seems to me that this bill is an enormous one. It is a bill of very weighty subject matter.

What plans are there for the chamber? The chamber should be in a state of winding down its business, in anticipation of the election of a new leader. However, more and larger bills are being introduced.

Could the government leader tell us how it will be possible to process such a weighty bill here in the Senate in another two or three weeks?

**Senator Carstairs:** The honourable senator has certainly identified a huge challenge. This is, indeed, a very large bill.

In that regard, I remind honourable senators of a process we now have but which we did not have just a few years ago. It is one that allows the House of Commons to resurrect a bill. If we were unable to finish with this bill prior to the prorogation that some people seem to think will take place, then it could be resurrected in the other place and sent back to us for us to complete our work on it.

There are a number of options here that could be investigated. Obviously, people would like us to deal with this bill as quickly as we can. I concur entirely that it is a heavy bill and must receive due consideration by all members of this chamber.

**Senator Cools:** Honourable senators, I am relieved to hear what the leader has said. I must admit that seeing such major initiatives of such momentous subject matter and of such legal complexity being rushed in haste and with insufficient study sends chills and alarms all through me.

I take no personal interest in the bill. It is not subject matter in which I get involved. However, I must admit that I am beginning to take a serious interest in the sheer weight and number of bills that are coming forward.

As far as I am concerned, this is a time when we should be sort of letting go. "Letting go" is an expression used in psychology. This is a time for the out-going administration to be letting go, rather than to be bringing on fresher, newer and more difficult initiatives. I do not think it is very responsible of us to be moving these bills through, knowing that we cannot give them the attention and the study they deserve.

I find what the honourable leader has said to be reassuring. Although, in light of what the honourable leader has said about prorogation, I can also take some issue with the fact of intending to defeat the effects of prorogation when prorogation is supposed to perform a certain task in the parliamentary system. However, that is an argument for another day.

I am greatly encouraged by the fact that the leader has indicated to us that she believes this bill should get the kind and quality of study that it deserves.

We all know that September 11 shook us to our roots and that the government has had to make a lot of initiatives and has needed a significant amount of legislative support to be able to offer Canadians the kind of quality and protection they deserve. This was unprecedented, and I would say previously unconsidered and unthought of protection. However, at the same time, I am of the opinion that we should proceed carefully and cautiously.

I wanted to record that. I am not taking any interest in the bill and I have not to this point in time. I was listening carefully. Based on the words of Senator Carstairs, this is a huge and enormous initiative.

**Senator Carstairs:** Honourable senators, I want to add one thing because I think this bill does require very careful study. We have had a number of questions in here and a number of concerns raised by senators on both sides of the chamber about our relationship with the United States and their attempt to make it more difficult in some cases for Canadians to cross the border.

I would be remiss if I did not indicate that they are anxious for some of the provisions of this particular piece of legislation to pass. In my view, that should not force our undue haste in passing the legislation. However, we would be naive if we did not recognize that the American government has just this past week indicated that it wants to have a more generous policy toward Canadians and Canadians crossing the border. I hope we want to encourage that attitude. However, there are provisions, particularly with respect to the Aeronautics Act, that are very important to the United States.

**Senator Cools:** I thank the honourable senator for that. I am very aware that our government is trying to restore stability and uncertainty in so many of these areas. After September 11, the disruptions were enormous.

I know that there is a good intention and I understand the needs that are out there. I understand the American concerns as well. Where I was coming from is that this bill be given the proper time and consideration, because these issues are difficult and sensitive.

• (1650)

To my mind, it is simply not good enough for us to blink, pass a bill and look around and say, "What was that we were voting on

just now?" I think we should take our jobs seriously. I am encouraged by what the honourable senator has had to say and about the seriousness with which we will take this bill.

**Senator Lynch-Staunton:** I should like to commend the Leader of the Government for assuring this chamber that this bill, if needed and if circumstances warrant, would be brought back in another session. That development would be welcomed. Her response indicates that the government realizes the complexity of this bill.

Why is that same approach not given to other bills that are also complex and controversial, such as Bill C-34 that is before us now? Perhaps she can give us the assurance that all bills will be treated the same way, that the deadline that we all feel but has yet to be confirmed will not be an impediment to a proper study of all legislation that comes before us, and that an exception will not be made for one bill in particular.

**Senator Carstairs:** I think it can be argued that some bills are weightier than others. There is a great deal of support for Bill C-34. Many senators wish to see that bill moved forward and believe it can receive adequate study in a much shorter period of time.

**Senator Lynch-Staunton:** If the honourable senator will allow the Senate to decide that, then I am on her side. However, if the government imposes its will on setting deadlines, I do not think she will find much support here.

**Hon. Pierre Claude Nolin:** I did not hear the answer that the government leader gave to Senator Banks. It has not been decided which committee will look into that — the decision is open.

**Senator Carstairs:** The Senate makes that decision.

**Senator Nolin:** I know that the bill talks about safety, air safety and aeronautics, but the common thread, the underlying theme of the bill is national security. If there is one place where that bill should be studied carefully, it is the Standing Senate Committee of National Security and Defence.

Ministers will be empowered to give their authority to another body for the sake of national security. Great power will be given to unknown individuals, but respected people, for the sake of national security. We will exchange information with other jurisdictions, other countries, for national security. If there is one place we should study that bill, it is in the National Security and Defence Committee, which knows about national security. There is only one committee that can conduct such a study. This is not a transportation bill; it is a national security bill.

I hope the honourable senator is open-minded and that the proposed legislation can be sent to the Standing Senate Committee on National Security and Defence.

On motion of Senator Lynch-Staunton, debate adjourned.



## CRIMINAL CODE

## BILL TO AMEND—SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Lapointe, seconded by the Honourable Senator Gauthier, for the second reading of Bill S-18, to amend the Criminal Code (lottery schemes).—(*Honourable Senator Milne*).

**Hon. Lorna Milne:** Honourable senators, its addictive properties have been compared to crack cocaine and deaths linked to it have more than quadrupled in the province of Quebec over the last five years. I believe that the time has come for the government to step in and do something to stem the tide of this killer.

No, I am not talking about the latest drug to hit the streets. No, it is not a new weapon that is being brandished by gangs across the country. I am talking about something that is currently perfectly legal in Canada — and that is the video lottery terminals, or VLTs.

Provincial lottery and gaming authorities have been allowing VLTs to be placed in restaurants and bars for years now. There is no doubt that they are very popular and they generate a significant amount of revenue for the provinces. However, that revenue has come at a very high price.

In a report released on October 3, 2003, the Quebec coroner noted that from 1999 to 2003 there were 126 suicides in Quebec related to gambling, compared to just 27 in the previous four years. The coroner noted that in the vast majority of those 126 suicides, the person was addicted to VLTs. This issue is becoming so serious that earlier this spring, at a recent annual meeting of provincial coroners that was held in Iqaluit, the coroners devoted a portion of their agenda to discuss how suicides related to gambling could be prevented.

In my own province, the statistics are not readily available, but I can tell senators that I have heard many stories about deaths in the parking lots of Ontario's casinos. Many people have been caught in the disease of gambling simply because it is much more available to them than ever before.

In a time where voters demanded tax cuts, provincial governments found that gambling was their only growing source of revenue. By putting VLTs in restaurants and bars across the province, they were able to make up some of the revenue that they lost when tax cuts were made. I believe that this activity by some provinces, including my home province of Ontario, is immoral.

Honourable senators, this bill attempts to start to stem the tide of addictive VLT gambling by limiting where they can be placed to casinos and racetracks. I support this move. The passage of this bill will help to address the problems associated with addictive gambling in a number of ways.

First, by limiting the number of places where a person can get to a VLT, it will become somewhat more difficult for those with gambling problems to get their fix. Further, by limiting the positioning of VLTs to casinos and racetracks, it will keep them away from Canada's youth. Many restaurants, for example, have VLTs on the premises where teens can play unsupervised. Canada's casinos and racetracks do not allow people under the age of majority to be on site. Therefore, this move will help to keep our young people, many of whom are already addicted to video games, from suffering the harms of gambling.

Another concern that has been raised in connection with the proliferation of VLTs is their use by organized crime to raise funds. Before Ontario legalized the placement of VLTs in restaurants and bars, many people indicated that it would be virtually impossible to distinguish between a machine that was operating legally and a grey market machine whose processes could be diverted to criminal elements. Limiting the use of these machines to provincially controlled casinos and racetracks will eliminate this concern.

Finally, unlike in restaurants, casino and raceway staff, I have been assured, are trained to look out for those suffering or showing the symptoms of problem gambling, and to offer help and support to those who are ill to the point of being unable to gamble responsibly. For example, all Ontario casinos have programs whereby a gambler can voluntarily enter into an agreement to keep out of the establishment. If that person then returns, he will be automatically arrested for trespassing by casino security.

At the same time that this agreement is entered into, the casino offers help in dealing with gambling addictions. The person is referred to one of 45 designated agencies across the province of Ontario, where they can access treatment for gambling addiction problems. These kinds of services simply are not available at restaurants, where the lure of a VLT in the corner at the bar may be too much for those who suffer from what is really a debilitating disease.

• (1700)

Honourable senators, it is clear to me that the damage done by VLTs far outweighs the benefits of the revenue generated by them. Originally, lotteries were established to support charities and health care, while providing a legal outlet for the gambling that always seems to occur in society. We have, however, moved far beyond the limited scope of lotteries. Gambling is now a multi-billion dollar industry in the Province of Ontario alone. Governments are addicted to the revenues. Although an argument can be made that some gambling and lotteries are fun and beneficial to society, no one can seriously argue that the crack cocaine of gambling is something desirable for Canadians. I encourage all honourable senators to vote in favour of Bill S-18.

**Hon. Anne C. Cools:** Will the Honourable Senator Milne take a question?

**Senator Milne:** I will.

**Senator Cools:** I have been touched by the whole phenomenon of problem gambling and all honourable senators join in this concern. As I listened to Senator Milne's explanation, I wondered why an amendment to the Criminal Code is necessary to place such limits? It seems to me the senator described not a criminal matter, per se, but rather a need for a regulatory scheme. I believe that the honourable senator was promoting the use of a regulatory scheme and perhaps that is the intent of the bill. Why must the Criminal Code be amended in this case?

I belong to that group of lawmakers who believes and upholds the notion that the Criminal Code should be resorted to rarely. What considerations were given to achieving the same end via a regulatory scheme? In setting up the firearms registry many people proposed to the government that it look to regulatory processes rather than Criminal Code processes. The approach taken has led to many problems. There is quite a difference between the two approaches. Could the honourable senator shed some light on this perplexing matter?

**Senator Milne:** I believe that suicide is a Criminal Code matter, which I hope this bill will address. These questions can be raised in committee and I am hopeful that this bill will be referred immediately to committee where it will study other ways of dealing with this issue. This is not a regulatory matter at this time.

**Senator Cools:** I should like to make my point clear for the record.

I would certainly be pleased to hear Senator Lapointe speak to this matter.

[Translation]

**Hon. Jean Lapointe:** Honourable senators, the main reason we moved an amendment to the bill is that video lotteries come under provincial jurisdiction. The provinces control revenues from casinos. The only way to get around the problem was through an amendment to the Criminal Code. I thank you, Senator Milne, for your heartwarming remarks.

[English]

**Senator Cools:** I appreciate the response of the honourable senator that it is a provincial matter that requires to be dealt with by way of provincial statutes and regulations. Amendments to the Criminal Code are in the federal domain.

I understand the purpose of the bill and changes should be explored. Perhaps when the bill is referred to committee we could invite provincial representatives to appear before our committee to shed some light on some of these problems.

Senator Lapointe referred to people being driven to desperation because of an addiction to gambling. It must be extremely unsettling for individuals to gamble away their homes and then have to confront the realization of what they have done later.

For honourable senators information, suicide is no longer a criminal offence. Perhaps that is because it was found to be difficult to prosecute dead people. However, it is still a criminal offence to counsel, aid and abet suicide. Although suicide is no longer a criminal offence, it is homicide of the self. I want to put that on the record, because it concerns us all.

**Hon. Marcel Prud'homme:** Honourable senators, as a member of the other place, I introduced a private member's bill dealing with the issue of suicide. The matter was taken up by Mr. Otto Lang who was responsible for an amendment to the Criminal Code. As a result, suicide was no longer a crime. That was a long time ago.

**Senator Milne:** I thank you for that.

**Hon. Pierre Claude Nolin:** Honourable senators, I will phrase my comment in the form of a question. The Legal Committee has reflected at length on the use of the Criminal Code. The members of that committee came to the conclusion, after researching many documents and well-thought-out papers, that the Criminal Code and the penal law in prosecution should be used when human action causes significant damage to others. The bill proposed by Senator Lapointe meets that criterion. It is the perfect example of the intended use of the Criminal Code.

I listened carefully to the speech by Senator Lapointe as well as the comments made by other senators. Senator Cools' question as to why the Criminal Code should be amended in this instance has been answered. This human action can cause significant damage to others. I would suggest that we forget about the issue of suicide because once a person is dead, nothing further can be done. However, Senator Lapointe, in his support of the bill, referred to the damage that can be caused to families as a result of habitual gambling, and that should be covered by the Criminal Code. Will the honourable senator answer yes or no?

**Senator Milne:** I will not answer yes or no, but I will agree that this strikes deep into the heart of society. As a matter of fact, in addressing criminal matters and the fact that abetting suicide is a criminal matter, perhaps casinos could be charged with abetting suicide.

Motion agreed to and bill read second time.

[Translation]

REFERRED TO COMMITTEE

**The Hon. the Speaker pro tempore:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Lapointe, bill referred to the Standing Senate Committee on Legal and Constitutional Affairs.



• (1710)

[English]

## PARLIAMENT OF CANADA ACT

### BILL TO AMEND—SECOND READING— DEBATE SUSPENDED

On the Order:

Resuming debate on the motion of the Honourable Senator Oliver, seconded by the Honourable Senator Stratton, for the second reading of Bill S-16, to amend the Constitution Act, 1867 and the Parliament of Canada Act (Speakership of the Senate).—(*Honourable Senator Beaudoin*).

**Hon. Gérard-A. Beaudoin:** Honourable senators, Senator Oliver has proposed legislation that has as its objective the election of the Speaker of the Senate. First, I wish to analyze the constitutional question. Thereafter, I shall say a few words about democracy.

Since 1982, we have had a procedure to amend the Constitution of Canada, in sections 38 to 49 of the Constitution Act, 1982. There are five facets. First, there is the residual and general one—that is, Ottawa and the seven provinces having 50 per cent of the population.

The second formula is the unanimity rule, that is, Ottawa and all provinces. This applies in five cases. This is the monarchy, the representation in the House of Commons, the use of English and French languages, the composition of the Supreme Court, and an amendment to the formula of amendment itself.

The third facet is an amendment to the Constitution in relation to any provision that applies to one or more but not all provinces—that is, Ottawa and one or more interested provinces.

The fourth one is the amendment of the federal internal constitution—that is, the executive government of Canada or the Senate and the House of Commons. That is section 44.

Finally, the fifth facet is the amendment of the internal constitution of the provinces, section 45.

Section 34 of the Constitution Act, 1867 reads as follows:

The Governor General may from Time to Time, by Instrument under the Great Seal of Canada, appoint a Senator to be Speaker of the Senate, and may remove him and appoint another in his Stead.

In my opinion, Parliament may amend section 34 of the Constitution Act, 1867 on the basis of section 44 of the Constitution Act, 1982, which reads as follows:

Subject to sections 41 and 42, Parliament may exclusively make laws amending the Constitution of Canada in relation to the executive government of Canada or the Senate and House of Commons.

Therefore, it is possible to amend the Constitution by a simple statute of a constitutional nature, for that case, of course.

[Translation]

The Governor General is losing one power. We may have to seek the consent of the Crown. I am referring here to citation 727 in Beauchesne, 6th Edition, which states:

[English]

The consent of the Crown is always necessary in matters involving the prerogatives of the Crown.

[Translation]

In my opinion, section 44 of the Constitution Act, 1982 authorizes Parliament to make an amendment. In addition, there is a constitutional convention whereby the Speaker of the Senate is selected by the Prime Minister.

Debate suspended.

## BUSINESS OF THE SENATE

**The Hon. the Speaker *pro tempore*:** Honourable senators, it being 5:15 p.m., pursuant to order of the Senate made on October 20, 2003, any proceedings before the Senate must be interrupted to dispose of the deferred vote on the motion in amendment of the Honourable Senator Gill, seconded by the Honourable Senator Watt, that Bill C-6 be not now read the third time, but that it be read a third time this day six months hence.

[English]

Pursuant to rule 66(3), the bell to call in the senators will be sounded for 15 minutes.

Call in the senators.

• (1730)

## SPECIFIC CLAIMS RESOLUTION BILL

### THIRD READING

On the Order:

Resuming debate on the motion of the Honourable Senator Austin, P.C., seconded by the Honourable Senator Joyal, P.C., for the third reading of Bill C-6, to establish the Canadian Centre for the Independent Resolution of First Nations Specific Claims to provide for the filing, negotiation and resolution of specific claims and to make related amendments to other Acts, as amended,

And on the motion in amendment of the Honourable Senator Gill, seconded by the Honourable Senator Watt, that Bill C-6 be not now read the third time, but that it be read a third time this day six months hence.

Motion in amendment negated on the following division:

YEAS  
THE HONOURABLE SENATORS

Adams	Johnson
Andreychuk	Kinsella
Atkins	Lapointe
Beaudoin	LeBreton
Buchanan	Lynch-Staunton
Carney	Nolin
Cochrane	Oliver
Cools	Prud'homme
Corbin	Rivest
Di Nino	Robertson
Eyton	Spivak
Forrestall	Stratton
Gill	Tkachuk
Gustafson	Watt—28

NAYS  
THE HONOURABLE SENATORS

Austin	Kolber
Banks	Kroft
Bryden	LaPierre
Callbeck	Lavigne
Carstairs	Mahovlich
Chalifoux	Massicotte
Christensen	Merchant
Cordy	Milne
Day	Pearson
De Bané	Phalen
Downe	Poulin
Fairbairn	Poy
Finnerty	Ringuette
Fitzpatrick	Robichaud
Fraser	Roche
Furey	Rompkey
Graham	Sibbeston
Hervieux-Payette	Smith
Hubley	Stollery
Kenny	Trenholme Counsell
Kirby	Wiebe—42

ABSTENTIONS  
THE HONOURABLE SENATORS

Bacon	Joyal
Ferretti Barth	Moore—5
Grafstein	

**The Hon. the Speaker pro tempore:** Honourable senators, the question is now on the motion of Senator Austin, seconded by the Honourable Senator Joyal, for the third reading of Bill C-6, to establish the Canadian Centre for the Independent Resolution of First Nations Specific Claims to provide for the filing, negotiation

and resolution of specific claims and to make related amendments to other acts, as amended.

Those in favour of the motion will please say "yea."

**Some Hon. Senators:** Yea.

**The Hon. the Speaker pro tempore:** Those opposed to the motion will please say "nay."

**Some Hon. Senators:** Nay.

**The Hon. the Speaker pro tempore:** In my opinion, the "yeas" have it.

*And two honourable senators having risen:*

**The Hon. the Speaker pro tempore:** Pursuant to rule 67(5), we will now proceed with a standing vote.

Motion agreed to and bill as amended read third time and passed, on the following division:

YEAS  
THE HONOURABLE SENATORS

Austin	Kolber
Banks	Kroft
Bryden	LaPierre
Callbeck	Lavigne
Carstairs	Mahovlich
Chalifoux	Massicotte
Christensen	Merchant
Cordy	Milne
Day	Pearson
De Bané	Phalen
Downe	Poulin
Fairbairn	Poy
Finnerty	Ringuette
Fitzpatrick	Robichaud
Fraser	Roche
Furey	Rompkey
Graham	Sibbeston
Hervieux-Payette	Smith
Hubley	Stollery
Kenny	Trenholme Counsell
Kirby	Wiebe—42

NAYS  
THE HONOURABLE SENATORS

Adams	Kinsella
Andreychuk	Lapointe
Atkins	LeBreton
Beaudoin	Lynch-Staunton
Buchanan	Nolin
Cochrane	Oliver
Cools	Prud'homme
Corbin	Rivest
Di Nino	Robertson
Eyton	Spivak
Forrestall	Stratton
Gill	Tkachuk
Gustafson	Watt—27
Johnson	



ABSTENTIONS  
THE HONOURABLE SENATORS

Bacon	Grafstein
Carney	Joyal
Ferretti Barth	Moore—6

• (1740)

[Translation]

CONSTITUTION ACT, 1867  
PARLIAMENT OF CANADA ACT

BILL TO AMEND—SECOND READING—  
DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Oliver, seconded by the Honourable Senator Stratton, for the second reading of Bill S-16, to amend the Constitution Act, 1867 and the Parliament of Canada Act (Speakership of the Senate).—(*Honourable Senator Beaudoin*).

**Hon. Gérard-A. Beaudoin:** Honourable senators, I will pick up where I left off.

In my opinion, section 44 of the Constitution Act, 1982 gives Parliament the power to amend. Moreover, there is a constitutional convention that the Prime Minister chooses the speaker of the Senate. A constitutional convention can be changed; it can be dropped by the Prime Minister.

[English]

The advisory opinion given in 1979 by the Supreme Court of Canada on the status and powers of the Senate disposes of that first point, in my view, that is, that section 44 applies.

Some will say that it is the general or residual facet of the formula of amendment — 7-50 — that applies, that is, section 38 and 42 of the Constitution Act, 1982. This is not my view. Furthermore, I do not think that section 41, the unanimity rule, applies in this case because we do not replace the monarchy by a republican system. In such a case, of course, section 41, the unanimity rule, would apply.

Again, the reference of 1979 on the powers of the Senate disposes of that question. Section 44 of the formula of amendment replaces section 91.1 of the BNA (No. 2) Act, 1949, and section 45 replaces section 91.1A of the BNA (No. 2) Act, 1867. Again, this disposes of the legal question.

The second question is this: "Should we do it?"

The system that we inherited in 1867 from the United Kingdom is a good one, no doubt. However, we must remember that, in 1867, we were a colony in the British Empire, with an interior autonomy. Since 1931, we have been an independent country and we are in the concert of nations.

As a matter of fact, as the Supreme Court said in the patriation case of September 1981, Canada became independent in the 1920s, between 1919 and 1931, at the time of the Balfour Declaration. Finally, in 1931, the Parliament of Westminster confirmed in law what already existed in the facts.

In 1867, we modelled our Senate on the House of Lords instead of on the American Constitution. The House of Lords is an aristocratic house. The House of Lords lost some of its powers in 1911 and 1949. That was not the case for the Senate, in spite of the fact that we have been talking about amending the Senate for more than a century. In 1965, we amended the tenure of office of senators. At first, senators were appointed for life; since 1965, senators retire at age 75.

Since we are talking about some reforms of the House of Lords, I must say, en passant, that I am pleased to see that Prime Minister Blair has abolished the position of Lord Chancellor. The Lord Chancellor was simultaneously a judge, a legislator and a member of cabinet. That is something. The three powers, in my humble opinion, should be separated. This is much better for democracy.

My view, and the views of many others, is that the Speaker should be elected. In a great democracy, as Canada clearly is, the Speaker of the Senate should be elected. I do not speak of the question of an elected Senate. That is not the object of Senator Oliver's bill. That subject is not before us, although I have an opinion on that, too.

The Senate, as much as the House of Commons, is a legislative house with great powers. In a democracy, the Speaker of the Senate should be elected. The Senate differs from the Commons on three points only: money bills should originate in the House of Commons; our veto on constitutional amendment as dealt with in section 47 is a suspensive veto of six months; and there is no vote of confidence in the Senate. For the rest, both Houses have the same power.

Part of our Constitution is written and part is unwritten. It was necessary to do that in 1867, since we are a federation. Every federation has a division of powers enshrined in its constitution.

The Supreme Court, in the patriation case of 1981, stated that the Constitution consists of three elements: the Constitution Acts since 1867; the decisions of the courts; and, finally, the conventions of the Constitution. Those conventions, which are important, involve the unwritten part of the Constitution — the choice of the Prime Minister, the vote of confidence in the Commons, the dissolution of the House, and so forth. Those conventions are numerous and of the highest importance, as we can see.

• (1750)

The courts may recognize these conventions, but they do not impose them. If they are not complied with, the remedy remains in the political arena. The courts do not implement the Constitution.

A convention of the Constitution, according to the illustrious Professor Jennings required three elements: The precedents and usages; the actors who consider they are bound by a convention; and, finally, a *raison d'être* for the convention.

[Translation]

The conventions are based on custom and precedent. Their purpose is "to ensure that the legal framework of the Constitution will be operated in accordance with the prevailing principles or values of the period," said the Supreme Court in its 1981 Patriation Reference.

[English]

The House of Commons has an elected Speaker. Why not the Senate? After all, are we not a legislative house?

According to the experts, the great democracies of the world are not numerous, but our country is among those great democracies. I do not see why, with our legislative status, we should not, at the appropriate time, elect our president.

Compared to the Senate of 1867, the Senate of today is much stronger, especially with the Senate committee system that has been developed. It is true that, in amending section 34 of the Constitution Act of 1867, we transferred the power of the executive to the legislative branch of the state. That is a good thing, in my opinion, because the legislative branch of the state is not as strong as are the executive branch and the judicial branch, as is the case in British-inspired systems.

We now have an opportunity to give more power to the legislative branch of our federation. In my opinion, we should take it.

**Hon. Anne C. Cools:** Would Senator Beaudoin take a question?

**Senator Beaudoin:** Yes.

**Senator Cools:** I know that the bill —

**The Hon. the Speaker *pro tempore*:** Senator Cools, I regret to inform you that the time for speaking on that matter has expired.

**Senator Beaudoin:** I may answer the question.

**The Hon. the Speaker *pro tempore*:** Is leave granted to answer one question?

**Hon. Senators:** Agreed.

**Senator Cools:** This is very important. A characteristic of the Houses of Parliament is that they do not have the powers to appoint even their own officers, such as the Clerk of the Senate and the Black Rod. These are all appointments of Her Majesty. This is just a characteristic or feature of Parliament.

Section 34 of the BNA Act respects that. Section 34 deals with how the current Speakers of the Senate are appointed. It reads as follows:

The Governor General may from Time to Time, by Instrument under the Great Seal of Canada, appoint a Senator to be Speaker of the Senate, and may remove him and appoint another in his Stead

The BNA Act's Section 34 is not much concerned about how that person is chosen. The BNA Act is concerned with how that person is appointed. The BNA Act has presupposed that the Prime Minister, in making recommendations to the Governor General for the appointment, will choose candidates who enjoy the respect, the esteem and the affection of senators.

What I am trying to get at is that, as long as these positions are great offices of state, they have to be appointed by Her Majesty or Her Majesty's representative. That is the conundrum that the honourable senator does not seem to solve and neither does Senator Oliver. We all agree that the person who sits in the Chair should have our affection and esteem. Whether that person is chosen by a direct election or not is a different matter. For hundreds of years, the election of the Speaker of the House of Commons was not done by direct election and secret ballot by members. It used to be done by way of government motion.

How does the honourable senator solve that conundrum? There is nothing in sections 41, 42 or 44 that would allow Parliament to amend the powers of Her Majesty in making Her Majesty's appointments. These are Her Majesty's appointments under the instruments of the Great Seal. It just cannot be done that way. I am very curious about this.

**Senator Beaudoin:** The solution to problem seems, to me, to be very logical in constitutional law. Currently, the Speaker of the Senate is a senator who is appointed. If we pass the amendment proposed by Senator Oliver, that position will no longer be an appointment. It will be done by way of an election.

Section 44 of the Constitution Act, 1982 clearly specifies — and I think that the Supreme Court would agree — that:

Subject to sections 41 and 42, Parliament may exclusively make laws amending the Constitution of Canada in relation to the executive government of Canada or the Senate and House of Commons.

That power is given. The Speaker will still be the Speaker. The only difference is that he or she is appointed instead of elected.

In the House of Commons, the Speaker is also elected. In my opinion, by a simple amendment, a constitutional statute adopted by Parliament, Parliament may amend section 34, because that is exactly what is contemplated by section 44.

When we decided in 1965 that senators should retire at age 75, this was accomplished by a simple amendment to the Parliament of Canada Act. Section 44 of the Constitution Act, 1982 succeeded section 91.1A of the British North America Act, 1867. I see no difficulty with this procedure. I believe we have

[ Senator Beaudoin ]



that power. What is alternative, honourable senators? Is it to have unanimous consent? We are not abolishing the monarchy. We are continuing with a constitutional monarchy, except that the head of the Senate would be elected from among the senators by senators.

**Senator Cools:** The election that the honourable senator is speaking of would result in the selection of the person. It would not create the office. Only Her Majesty's appointment can create that office.

• (1800)

This is what I am trying to say. This is the question that no one here is answering, because Parliament does not have the power to appoint its own officers.

[Later]

Honourable senators, I am finished. I think Senator Beaudoin has worked hard enough for today.

**Senator Beaudoin:** I have given my opinion and it is clear-cut.

On motion of Senator Cools, debate adjourned.

[Translation]

## BUSINESS OF THE SENATE

**The Hon. the Speaker pro tempore:** Honourable senators, it is now 6 p.m., and pursuant to rule 13(1) I must leave the Chair until 8 p.m.

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I believe that honourable senators might consent not to notice the hour in order to consider two items on the Order Paper: Bill C-250 and a motion by the honourable Senator Kirby to allow the committee to sit. All the other items can be stood until the next sitting.

## COMMITTEES AUTHORIZED TO MEET DURING SITTING OF THE SENATE

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I want to also ask that the committees required to sit at 6 p.m. be granted leave to do so.

**The Hon. the Speaker pro tempore:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

**The Hon. the Speaker pro tempore:** The committees are now authorized to meet.

Motion agreed to.

[English]

## CRIMINAL CODE

### BILL TO AMEND—SECOND READING— ORDER STANDS

On the Order:

Resuming debate on the motion of the Honourable Senator Joyal, P.C., seconded by the Honourable Senator Mahovlich, for the second reading of Bill C-250, to amend the Criminal Code (hate propaganda).—(*Honourable Senator Cools*).

**Hon. Anne C. Cools:** Stand.

**Hon. Serge Joyal:** Question!

**The Hon. the Speaker pro tempore:** Are you moving the adjournment of the debate, Senator Cools?

**Senator Cools:** I stood this item. I said "stand."

**Hon. John Lynch-Staunton (Leader of the Opposition):** The item is in her name; she said "stand."

[Translation]

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, to clarify matters, when Item No. 2, Bill C-250, was called, the Honourable Senator Cools said "stand." The Honourable Senator Joyal asked that the question be put. In such a case, I do not know if we would normally ask the person to move adjournment and whether it is agreed to or not.

[English]

**Senator Cools:** I am a little confused. I was under the impression that we were proceeding very tentatively to stand all remaining items. Senator Carstairs approached me and explained the situation, and I said, "Very well, I will stand this item." It seems something is wrong here. We are still proceeding and it is past six o'clock. I was under the impression that we were quickly whisking along. That is what I understood.

When that agreement was made, I was operating under assumptions. Perhaps my assumptions were wrong, but I was under the impression that we did not want to stay sitting here and that we would not see the clock for only a few minutes.

[Translation]

**Senator Robichaud:** Honourable senators, when I asked to stand these items, I wanted us to address Bill C-250 and Motion 151. I was told we were prepared to talk about Bill C-250 and that we would do so today. For that reason, I asked that this item be taken into consideration now. If that does not work, I will not press the issue. We, and the members opposite, wanted to accommodate those who intended to move Bill C-250 forward.

Order stands

[English]

## SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

### COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

**Hon. Marjory LeBreton**, pursuant to notice of October 8, 2003, moved:

That the Standing Senate Committee on Social Affairs, Science and Technology have power to sit at 3:30 p.m. on Wednesday, October 22, 2003, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

She said: Honourable senators, by way of explanation, I am fully cognizant of the fact that there is a vote tomorrow in the chamber. The committee will wait to sit until after the vote. The reason committee members want to sit while the Senate may be sitting is that we have arranged for a video-conference with representatives of the Centers for Disease Control and Prevention in Atlanta. The equipment is technically difficult to set up and we have the room set aside. Therefore, I would request that the motion standing in my name be approved.

**Hon. Marcel Prud'homme**: Honourable senators, it is a question of principle that at least I stand up to say that I have strong reservations. I want to be on the record to explain and then I will sit down.

A committee asked to sit this afternoon. I must say that I usually object because there will be eventually no senators in the

chamber. However, if I am not involved directly, then I have no objection if others wish to sit.

I have no objection to this motion. However, my chair will ask for permission to sit tomorrow and he has consulted with me. I appreciate the graciousness of Senator Kroft who asked me if I would allow the Banking Committee to sit tomorrow.

I now place myself in the hands of Senator Robichaud and Senator Carstairs. There are items on the Order Paper that are of great interest to me. I will not be derelict to my duty because I am not on the Social Committee. However, permission to sit will be requested tomorrow and I will say yes. If, during that time, the Senate proceeds to address bills that I might wish to speak on — I have three items, two of which stand in my name — where do I go? We are on the final report. The draft is ready in both languages. I will not delay that. Where do I go tomorrow? The Banking Committee is working on the final acceptance of a very important item to report back to the Senate.

I would like to say yes to this request, but I hope that Senator Carstairs and Senator Robichaud will keep this in mind when my committee sits.

**The Hon. the Speaker**: Is it your pleasure, honourable senators, to adopt the motion?

Motion agreed to.

The Senate adjourned until Wednesday, October 22, 2003, at 1:30 p.m.



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OFFICIAL REPORT  
(HANSARD)

Wednesday, October 22, 2003

THE HONOURABLE DAN HAYS  
SPEAKER



## CONTENTS

(Daily index of proceedings appears at back of this issue).

## OFFICIAL REPORT

### CORRECTION

**Hon. Marcel Prud'homme:** Honourable senators, I do not know how I could have made a mistake like this, but with all due respect to Senator Lawson, the Dean of the Senate, as everyone knows, is our esteemed friend Mr. Sparrow. I would ask permission to make a correction on page 2138 of the *Debates of the Senate* in both French and English, to replace the name "Lawson" with the name "Sparrow."

**The Hon. the Speaker:** Is it agreed, honourable senators?

**Hon. Senators:** Agreed.



## THE SENATE

Wednesday, October 22, 2003

The Senate met at 1:30 p.m., the Speaker in the Chair.

Prayers.

**The Hon. the Speaker:** Honourable senators, I have received a letter from the Honourable Sharon Carstairs, Leader of the Government in the Senate, which reads as follows:

Pursuant to rule 22(10), I request that the time provided for the consideration of "Senators' Statements" be extended today for the purpose of paying tribute to the Honourable Senator Leo Kolber, who will be retiring from the Senate on January 18, 2004.

### SENATORS' STATEMENTS

#### TRIBUTES

THE HONOURABLE E. LEO KOLBER

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, it is with both pleasure and sadness that I offer my best wishes to Senator Kolber on his forthcoming retirement. Senator Kolber has made many contributions to the Senate that extend beyond his service with the Standing Senate Committee on Banking, Trade and Commerce, of which he was a long-term member and chair. He has given advice and support to prime ministers, to politicians and to businessmen. Through his close ties with leading political and business leaders in many other countries, he has increased awareness overseas of Canadian capabilities and accomplishments.

Senator Kolber has also been known for his fundraising abilities, both political and charitable, and particularly for his dedication and hard work on behalf of the Jewish General Hospital.

Although others have aspired to the title, I believe the title "dapper dresser" surely must be shared with Senator Kolber.

I know that through their lifetime together, he and Sandra were very devoted to one another, and we were all dismayed at her all-too-early passing. All his personal accomplishments, I think, are much less significant when compared to the pride he feels for their children, Lynne and Jonathan.

Senator Kolber, I join together with our colleagues in wishing you every happiness in your future endeavours. You have characterized your life in your new book as "a tremendous ride." We are glad to have been able to share some of that ride with you, and we hope that you will have many pleasant and interesting memories of the years you have spent among your colleagues in this chamber.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, it is as an old friend that I rise to say a few words about Senator Kolber, as we have known each other

since long before he was appointed to the Senate. During all this time, I have been directly aware of many of his contributions to his community in particular and to his city in general, supported so affectionately by his talented wife, Sandra. He is to be commended for his exceptional generosity of time and resources that are of such benefit to so many of his fellow citizens.

If he is a most persuasive and effective leader of a good cause — and unlike Senator Carstairs, I exclude any political activity from this term — it is in large measure because he sets the example by a complete commitment to it, staying with any objective for as long as it takes to be achieved.

The Senate has greatly benefited from his tenacity, particularly as Chairman of the Standing Senate Committee on Banking, Trade and Commerce, when more than one colleague, witness or staff member have felt his own particular brand of shock and awe. The end result is what counts, he will maintain, and the end result has been hearings and reports of great value to the country as a whole, and I congratulate him for his leadership in this regard.

Well done Leo, and all the best wishes for many active years from this place, which will certainly miss you.

**Hon. Richard H. Kroft:** Honourable senators, prior to coming to the Senate in 1998, I did not know Senator Kolber well. We had met on a number of occasions in the course of political activities, cultural events and through mutual friends. What I did know about him, however, was impressive. I knew he was responsible for one of Canada's outstanding business stories — the building of Cadillac Fairview into one of the great real estate companies in North America. I knew he had been a trusted and intimate adviser to one of the most important families in Canadian business, and through that association was involved in an intriguing set of business activities across North America and around the world. I knew he had been a driving force in a wide range of cultural and philanthropic endeavours in his home base of Montreal and many other places.

I have personal knowledge of the extraordinary role he has played as a fundraiser for the Liberal Party of Canada. I was for some years responsible for Liberal Party fundraising in Manitoba, and one day Leo arrived in my office in Winnipeg to talk. It was one of the many stops he made on an amazing odyssey. The Liberal Party had a large financial problem and Leo set out to solve it — single-handedly. He was going across Canada himself, literally coast to coast, to raise the funds the party needed.

I have since come to understand that this action was classic Leo — acknowledge the problem, determine a solution and simply get about doing it. The more I have come to know Leo and the more I have come to know about him, I realize this is his way. Of course it is not as simple as it sounds. Whatever the situation, it takes intelligence and often courage to define and accept the problem, and much more of the same to deal with it.

With Leo, it is not only the doing of things. It is also about style. Leo has a style that all of us who have worked closely with him, here in the Senate or elsewhere, have come to know. The words "shy," "reticent," "hesitant," "guarded," "devious," or even "subtle" have absolutely nothing to do with Leo. No one is ever in doubt about Leo's views or intentions on any subject. He tells you what he thinks and why he thinks it. He values clear, unvarnished communication over diplomatic niceties, he favours action over delay and he certainly gets things done.

With all of this, and because of it, Leo is great fun to work with and be with. His sense of humour is engaging. He has a great enthusiasm for life and for his projects, an enthusiasm that is contagious and endearing. Working with Leo and being his friend is never dull.

• (1340)

For these reasons, and for many more, the Senate will not be the same without Leo Kolber. We will miss him, and we wish him well in whatever he decides to do next.

**Hon. David Tkachuk:** Honourable senators, I am pleased to rise today to speak on the retirement of Senator Leo Kolber, not as an old friend, but as a new friend. You may think there are no two people less alike than Leo and I. When I was appointed Deputy Chair of the Standing Senate Committee on Banking, Trade and Commerce, I saw my appointment as an opportunity to make life uncomfortable for the government as well as an opportunity to engage in the particular work of the committee. On a number of occasions, Leo would come to me, wag his finger at me, as only he can, and say, "Dave, you're going to regret this."

We had an understanding in the Banking Committee. It was not easy at first. We were somewhat uncomfortable with each other, to say the least. There is some language in the *Debates of the Senate* and in the transcripts of the committee's proceedings that I know we would both like to take back. However, it was in private, in the steering committee meetings, where we got to know each other, those few minutes before or after a meeting. We learned about each other's families. We learned about our spouses — his late spouse, Sandra, and my wife, Sharon — our children, our love of Canada, our careers and our ideas.

Leo certainly knew people. I had my own *People* magazine in Senator Kolber. He often had the latest gossip on all the rich and famous people across Canada whom Leo knew.

As we came to know each other, we realized that, in another time and place, we could easily have been in the same political party. That is a fact. He would often say, "If there were a Conservative Party in Quebec, I might be in it."

However, Leo grew up in the Liberal party. He was a close friend to all of the leaders of the Liberal party that he had come to know. He would talk to me about Pierre Elliott Trudeau, as well as other leaders. It was an educational and interesting experience

for me. Of course, I would talk to him about the leaders of my party. We had a great time and a wonderful friendship.

Leo, you will be difficult to replace. If you were a Tory, I would move that the age of retirement for senators be extended. I know that it will be difficult for whatever Prime Minister or leader of the Liberal Party who will be making the appointment to replace you, because Leo, you are irreplaceable.

It has been a wonderful experience working with you on the Banking Committee. Our reports show that ours was a profitable relationship. I wish you good luck, Godspeed and God bless.

**Hon. Marie-P. Poulin:** Honourable senators, eight years ago Senator Leo Kolber graciously sponsored my entrance into this chamber. At that time, Canada was in a challenging political experience: the few weeks leading up to the 1995 Quebec referendum. Many honourable senators who were here then commented to me privately on our alliance of two cultural and religious minorities. I should like to quote one of them to you. That person said to me, "You and Leo certainly made a statement today, reminding me of what Canada is all about and about what the expression 'united we stand, divided we fall' really means." That is what Leo is all about — that is, standing up for family and friends, loyalty to principles, and to the party, and dedication to his community, his country and his roots.

In the last few years, I have had the honour of serving with Leo on the Banking Committee. You must always be careful with Leo in the chair: He has found a way of ensuring that his ideas, knowledge and experience are well-communicated. We thank him for that, as this country has moved forward in many financial areas because of his expertise and experience. It was a joy for me to serve with Leo on the Banking Committee.

Leo's departure from the Senate is Parliament's loss, the nation's loss and the Liberal party's loss. As you enter this new phase of life, Leo, I fervently hope that you will find peace and contentment in the full knowledge that you have earned the utmost respect of every colleague here.

To you, your children and grandchildren, I extend my deepest best wishes for health and happiness.

**Hon. Joyce Fairbairn:** Honourable senators, I did not wish this day to pass without expressing my personal admiration and thanks to Senator Kolber for the contribution he has made to the Senate and the business community as well as for his generosity and determined commitment to the political life of this country through the Liberal Party of Canada.

Over the years, I have had the privilege of being his friend. Senator Kolber has set an example of being what we westerners call a "straight shooter." Whether the matter at hand was public policy on banking or political strategy, you always knew where Leo stood — blunt, honest and often very colourful with his words.



Leo's business career is well known, but his contribution to the Senate and the support of this institution has only become public knowledge in recent years, particularly as the vigorous chairman of our Standing Senate Committee on Banking, Trade and Commerce. His views are respected and listened to carefully by governments and the financial community.

Leo and his beloved wife, Sandra, were an awesome team in the cultural and philanthropic life of Quebec and the City of Montreal. They were always devoted to the strength and well-being of the Jewish community and all that it serves.

As a friend, I was delighted in sharing Leo's loyal support of the Montreal Expos throughout their glorious years and indeed through their difficult times. With Leo's connection with the world of entertainment, he has always been able to guide me toward less cultural activities such as the joy of watching the Rolling Stones strut their stuff in Montreal.

Leo Kolber has and will continue to make a remarkable contribution to Canada. He should leave this chamber knowing that it is a finer place because of his presence.

He is a wonderful gentleman and I will truly miss him. I know that he has many wonderful, enjoyable and loving years ahead with his family.

**Hon. Herbert O. Sparrow:** Honourable senators, today I wish to bring my special thanks to Senator Kolber for his time in this chamber. I wish to thank him for being a new-found friend of mine, because I did not know him prior to his coming to the Senate.

I wish to thank Senator Kolber on behalf of all Canadians for the compassion he has shown to this chamber and to the Canadian people, for the talents he shared with us, for the ambition he has shown to us and for the knowledge he has shared with all of us.

• (1350)

I would just like to make one comment because I know there is a time limit on these remarks. Senator Tkachuk has suggested that Leo was perhaps closer to a conservative way of thinking and the Progressive Conservative Party than the Liberals. I would say this: Before he leaves, perhaps he could change over to the Conservative side of the house because it would be much better for one of them to go than one of us.

I want to thank Senator Kolber very much. I want everyone to know that when I grow up, I want to be just like him.

**Hon. Senators:** Hear, hear!

**Hon. E. Leo Kolber:** I would like to meet the guy you have all been talking about!

Honourable senators, I am deeply touched by the tributes of colleagues on the occasion of my impending retirement from this place. I am particularly touched by the gracious, generous statements of the Honourable Leader of the Government and by my good and long-time friend, the Leader of the Opposition.

Honourable senators will understand that I approach an occasion such as this with mixed emotions — with a sense of nostalgia but equally of gratitude for having the honour to serve in the red chamber for the last 20 years.

It seems to me it was only yesterday that I received a call from Prime Minister Trudeau to inform me of my appointment to what has been known unofficially as the "Jewish seat from Quebec." He said, "I have to tell you, you are not the Jewish community's first choice." I said, "I understand, Prime Minister." "But," he said, "you are my first choice." Then we had a good laugh over that, because I asked him, "Is there anything else that matters?"

I will remain grateful to Mr. Trudeau for the opportunity to serve. I am also grateful to the Right Honourable John Turner and the Right Honourable Jean Chrétien — two other leaders of my party under whom I have had the opportunity to serve.

Pierre Elliott Trudeau became an extremely close friend to my late wife and me, and we went on many trips. On almost all of them, Senator Jack Austin joined us, and we went to strange places. Mr. Trudeau would pick the trip each year, and it was usually to a place I had never heard of. How many honourable senators have heard of the Karakorum Pass in the Himalayan Mountains? Well, I had not. We went there — Senator Austin was with us, and our wives — and we went over the Himalayan Mountains into China. We went to Vietnam and Cambodia and to the Amazon jungle to see the Yanomami tribe, where no other tourists go, and on and on. Getting to know Mr. Trudeau and Senator Austin was one of the great privileges of belonging to this place.

It has been a unique privilege to serve in the Senate for the last 20 years among such colleagues, and whatever our partisan differences, we are all partisans of Canada. We are called upon to represent the interests of our provinces and the Senate, but we are equally motivated by our love for this country.

Mr. Trudeau put it well in the referendum debate of 1980, when he spoke in the House of Commons. He said, "What is the feeling of loving a country, which we call patriotism?" He continued, "Part of the answer lies in our debates, in the policies, laws and Constitution of this country. Part of the answer can be found in geography, in the history of this country, which, in a sense, are collective notions, history being the recital of things that we have done together in the past."

Serving here has allowed me to get a much better sense of both the geography and history of this country. It is a beautiful and bountiful land abundantly blessed by nature and providence alike.

I have also learned, in the words of Sir Wilfrid Laurier, "this is a difficult country to govern." I am sure Senator Angus — David, you had better be listening because I am mentioning your name — had the same experience I did in fundraising. On the trip to which I referred, I went with Herb Metcalf, who was my assistant and is now a lobbyist. It was not as bad as it sounds because I had the use of our company plane, et cetera, but we travelled coast to coast five times in nine months. We made 235 one-hour visits asking each poor "whoever" for \$25,000. It was amazing that no matter where we went in Canada, the person or persons in that province had a beef about Canada. No one seemed to be satisfied, but all were happy to live in Canada. In British Columbia, they said, "Who needs you, we have the Pacific Rim." When we got to Calgary, the National Energy Policy was bugging everyone. When we arrived in Manitoba, they were screaming about the Wheat Board. In Ontario, they were saying that they were giving more than they were getting; and in Quebec — I do not have to reiterate all the problems that we had in Quebec. When we got to the Maritimes, everyone was poor; no one had anything. Then we got to Newfoundland, and they said that they should have been part of the United States. I said, "80 per cent of you are on the dole; what are you talking about?"

I could not understand what was going on — but you know what? Almost everyone gave us money. They were all delighted to be in Canada, but I guess complaining was part of it.

There is no question that there are linguistic cleavages and regional divides in this country, but at the end of the day we all stand for a united and prosperous Canada. Those really are the fundamental tests of public policy, and I believe they are met in the Senate.

My Senate service has allowed me to meet thousands of our fellow citizens. There is not a brighter, more diverse or more interesting population anywhere than the people of Canada.

There is a popular perception, or maybe misperception, of the Senate. Honourable senators are well aware of the caricature of the appointed Senate as a "taskless thanks" — merely a political reward for services rendered to the government of the day. I must say this has not been my experience. I have always been struck by the outstanding work of Senate committees and the bipartisan spirit in which it is performed.

I know that honourable senators will permit me to say a kind word about my own committee, the Standing Senate Committee on Banking, Trade and Commerce, which I was privileged to chair for almost the last four years. This allows me to say to Senator Kroft that I wish him nothing but good luck and great success in becoming chair of that very illustrious committee.

In that spirit, I want, in particular, to thank the Honourable David Tkachuk, the Conservative deputy chairman of our committee — not only for his non-partisan spirit of cooperation — and I mean that — but for keeping his occasionally unruly colleagues in line.

**Senator Stratton:** I do not believe that.

**Senator Kolber:** The work of the Senate Banking Committee over the last four years is due, in no small measure, to his leadership and to colleagues on both sides. I am particularly proud of the work on large bank mergers, corporate governance and the question of capital gains. Our committee unanimously recommended that large bank mergers be permitted under appropriate regulatory rather than political oversight — and this within six weeks of having the issue referred to us by the Minister of Finance. So much for the image of the Senate as a group of doddering old men.

Parenthetically, Senator Tkachuk has been a strong advocate of a merger on the right, and I sincerely wish him and his colleagues well in that endeavour. Canadian democracy, in my opinion, will be very well served by a more competitive opposition — and please note I use the word "opposition."

**Senator Stratton:** For the moment.

**Senator Kolber:** We also have reason to be proud of our report entitled "The Perfect Storm," on ways and means of restoring integrity and confidence to financial markets in the wake of the wave of corporate scandals. If Canadian equity markets are to be competitive, we have to respond with appropriate but sensible frameworks for enhancing corporate governance.

Finally, our committee recommended the reduction of the capital gains tax by 50 per cent to put Canada on an equal footing and level playing field with the United States. The Prime Minister and the Minister of Finance of the day — the honourable member from Ville Émard — agreed. These were the days when they actually agreed. I regard this as a significant and lasting achievement that will bring new investment and new jobs to Canada and to Canadians.

• (1400)

Finally, allow me to express my gratitude to my family — to my children, Jonathan and Lynne, and to my four grandchildren, who I must never forget because they are the light of my life — for their encouragement during the years of my service in the Senate, and of course my late wife, Sandra, who, though physically incapacitated during the last decade of her life, remained very much on her game mentally and loved nothing more than a good discussion about politics.

I wish also to thank Shirley Strean, from my office, and the rest of my staff on the Senate Banking Committee. Staffers are the unsung heroes of Parliament Hill. We all know that.

Finally, honourable senators, allow me to express my deep thanks to colleagues on both sides of the chamber. Serving here has been one of the great honours of my life. I hope in some modest way I can continue serving our country for the remainder of my life. Perhaps I could return as the ethics commissioner.

**Hon. Senators:** Hear, hear!

**Senator Kolber:** In that sense, we all seek to give back to Canada a small measure of the huge amount that it has given to us. Thank you all very much.



**Hon. Senators:** Hear, hear!

**Hon. W. David Angus:** Honourable senators, one thing I have learned since I have been here is that if you cannot do it directly, you can always try to do it indirectly, so Leo, "It ain't over 'til it's over."

Honourable senators, I realize that time is short and restricted, but I earnestly wish to add just a few words of tribute to my very good friend, colleague and co-conspirator, Senator Leo Kolber, as he prepares to take his leave from the red chamber.

You may not be aware of this, honourable senators, but Senator Kolber and I, between us, in the official scheme of things, under the senatorial districts in Quebec, control the entire Island of Montreal. We represent the contiguous districts of Alma and Victoria, having a combined population of more than 3 million Canadians. Honourable senators, as you might expect, Leo represents the wealthy aristocrats, the capitalists and the immaculately tailored denizens of central Montreal, including Westmount, Hampstead, Notre-Dame-de-Grâce and the Town of Mont-Royal, plus the comfortable middle-class bedroom communities of the West Island, whereas I, on the other hand, as you will surely appreciate, am a man of the people, representing the many good, hard-working working class folks who inhabit that vast area to the east of Rue Saint-Denis. I have the privilege of following the late Senator Hartland Molson in this worthy task.

Although Senator Kolber and I are ardent supporters of different political parties and have differing outlooks in some critical areas, in the main, we are on the same wavelength on nearly all important subjects. We have worked together harmoniously and efficiently for many years. When we have agreed to disagree, we have done so with mutual respect and goodwill in the true democratic spirit that prevails here in this chamber and in the mission of the Senate.

As we have heard, Senator Kolber, before being called to this chamber, had a distinguished career as a lawyer, businessman, fundraiser and philanthropist. He has continued his good works while here in Ottawa and now leaves with an even more enviable and justified reputation as a wise, caring and giving Canadian. After he leaves us, I am certain and confident that he will continue on in the same vein.

I have been proud over the years to have had the privilege of interacting with and being a friend of Leo Kolber. We have raised funds together, at the same time, mutually, for our respective political parties and for charities such as McGill University and its teaching hospital. As well, we have striven together to produce good public policy, always with a strong and abiding mutual respect, and more often than not in a truly non-partisan fashion, the whole in the spirit of the doing what is right for Canada and its citizens, regardless of whether it be for the direct benefit of our constituents, the business community or some other particular interest group.

Leo, I deeply admire your manifest honesty, your high level of integrity, and your keen sense of doing what is right for our

nation. Thank you for your friendship, for your mentoring, for your wise counsel and for the high standards you have set for all of us here in the Senate. I join my fellow colleagues in wishing you a happy retirement. God be with you.

[Translation]

**Hon. Marcel Prud'homme:** Honourable senators, pardon me, I see that all honourable senators had a written text. They were all aware that we would be paying tribute to the Honourable Senator Kolber today, but I was not put in the picture. I particularly want to say a few words about Senator Kolber.

I still remember when his wife fell seriously ill. I sent her a personal note.

[English]

It said, "Get well soon, because I need you against Leo." She appreciated the humour, as did Senator Kolber, I am sure.

We have had occasion to clash immensely in the past. Years ago, by secret ballot, I was elected chairman of the national Liberal caucus, over Sheila Copps. It was quite a campaign, and that is where I learned more about Leo's ability to fight for opinions and ideas. We disagree only on one item — which I do not wish to talk about here today — only one item.

I have witnessed his chairmanship of the Standing Senate Committee on Banking, Trade and Commerce. As honourable senators all know, the Foreign Affairs Committee was my first choice, but I ended up on the Banking Committee, where I know everyone would like to be a member, because it is so prestigious, especially as presided over by Leo Kolber. One can learn an immense amount in that committee. Leo Kolber even saw a majority and unanimous consent for the report on bank mergers, when I objected to it I have not yet participated in the debate on the committee report, which is still on the Order Paper.

I want to say to Senator Kolber that I have always held him in the highest respect, and he knows that. He has teased me and I have teased him, for as long as we have known each other, since he was appointed to the Senate, and that goes back a long time. Opinions can be vigorously held, but respect is more important and should be highly regarded.

I wish to say to Senator Kolber that I learned immensely from him in the very few months I sat with him, face to face or next to him. I found him to be an extraordinary, firm, witty, quick chairman. I wish every chairperson could benefit from a lecture by Leo Kolber on how to chair and get action. Perhaps instead of returning as our ethics commissioner, he could start a school for chairs of committees, where he would show how to keep the respect of everyone while taking action.

I say to Senator Kolber that I am disappointed and surprised. His retirement date is January 18, and as such I feel like it is the last day of December; however, we are only in October. I hope we will have you with us until December, and then in January we will wave good-bye. Good luck.

**Hon. Jeremiah S. Grafstein:** Honourable senators, I also rise to pay tribute to Leo Kolber. Leo Kolber, Leo Kolber, Leo Kolber — a concise and clear name for a concise and clear-minded man. Leo and I arrived in the Senate within weeks of each other, close to two decades ago, and so have been colleagues and really great if not argumentative friends since that time.

Leo is an impatient man, and I will not try his patience much further today, for Leo is not patient with fools, pomp, cant or ceremony. He is a man of concise and clear common sense. He prides himself, rightly, on his ability to cut quickly through matters, whether business or politics, to reach the heart of any complex problem. This is a rare and great gift, which he has amply demonstrated in both his business and senatorial careers.

• (1410)

Leo is a builder — a builder of great buildings, great networks of friends, and political coalitions. He helped to build one political coalition that I believe helped save Canada.

He has applied his same rare gifts to philanthropy and causes ranging from the arts to education to health, as we have heard here today. If you probe him, you will find that he is a proud, pugnacious Canadian and a fierce, fearsome, proud Jew. This pride comes at a time when his co-religionist rights as an equal citizen are being challenged around the globe.

Honourable senators, Leo has now become an author. I can hardly wait to read the index to see if my many kindnesses to him have been reciprocated in that volume. I remain confident that when he leaves the Senate in a few months, he will not vacate the public arena and will continue to provide his insight, clarity of thought and energy all in the aid of the public good.

His life, his late wife, Sandra, and his family have filled a unique niche in the Canadian mosaic.

Leo, old friend, may I conclude, by giving you a traditional salute — L'chaim! To life!

**Hon. Senators:** Here, here!

## GOVERNMENT OF NEWFOUNDLAND AND LABRADOR

### PROGRESSIVE CONSERVATIVE VICTORY IN PROVINCIAL ELECTION

**Hon. Ethel Cochrane:** Honourable senators, I rise today to herald a new era in the Province of Newfoundland and Labrador and to congratulate the premier elect, Danny Williams and his Progressive Conservative team.

Yesterday, hundreds of thousands of voters — more than 72 per cent of all those eligible — turned out to cast their ballots. In fact, voter turnout jumped almost 13 per cent over the last election, which was the one called by Mr. Tobin.

The voter turnout was only part of the story. When the results were tallied, the face of government was dramatically different. For the first time in 14 years, we have a Progressive Conservative

government. While the NDP held steady at two seats, the Liberals were reduced to just 12 seats, down from 27.

**Some Hon. Senators:** Oh, oh!

**Senator Cochrane:** By the end of the night, seven Liberal cabinet ministers had lost their seats.

**Some Hon. Senators:** Oh, oh!

**Senator Cochrane:** Among them was the longest sitting Liberal, Walter Noel.

The victory has been described as a “Tory tide,” and indeed it was. The Progressive Conservatives received almost 59 per cent of the popular vote and today hold 34 of the 48 seats in the province's House of Assembly.

With the landslide victory, Mr. Williams says that he has a mandate to chart a new course for our province, one that will bring greater prosperity. He has also declared a mandate to make a meaningful improvement to the every day lives of my people.

Honourable senators, with Danny Williams and the Progressive Conservative team, voters in my province have chosen strong, confident leadership that will, I am hopeful, set us on our way to new opportunities, growth and renewed pride.

**Some Hon. Senators:** Hear, hear!

**Senator Cochrane:** I would like to congratulate all those who ran as candidates. I commend them for their desire to serve the people of the province. Above all, I congratulate Danny and the PC team, not only for their overwhelming victory, but also for a positive, clean campaign that stayed focused on the issues throughout.

Today, like so many other Newfoundlanders and Labradorians, I have renewed hope for the future of my people and my province.

**Some Hon. Senators:** Hear, hear!

### MINE BAN TREATY

**Hon. Elizabeth Hubley:** Honourable senators, one of Canada's finest hours within the international community as a nation of peace and humanitarianism took place in 1997 when our government took a leadership role in the adoption of the Mine Ban Treaty. This international treaty prohibits the use, stockpiling, production and transfer of anti-personnel land mines and enables their destruction.

The anti-personnel mine is one of the most inhumane weapons ever developed, killing and crippling not only combatants but also thousands of innocent civilians long after the war has ended. The recent tragic deaths of Sergeant Robert Short and Corporal Robbie Beerenfenger in Afghanistan certainly attest to the insidious and lethal effects of these types of weapons.



The Mine Ban Treaty, or the Ottawa Convention, now ratified by 129 nations, has led to the destruction of stockpiled weapons and the clearing of mined areas. However, anti-personnel land mines continue to be a problem of staggering proportions. About 60 countries throughout the world, including Afghanistan and Iraq, require assistance to eradicate land mines. It is important to point out that those countries with the greatest need are also among the world's poorest, lacking both the financial and technical resources to carry out an effective de-mining program.

Honourable senators, it is also unfortunate that many nations continue to produce and use anti-personnel mines, most notably the United States and Russia. The Canadian Land Mine Foundation has exemplified our country's commitment to the global ban on land mines by supporting de-mining, working to develop new technologies for land mine removal and by assisting the victims of land mines around the world.

A major part of the international campaign against land mines has been the Night of a Thousand Dinners, a unique way for people to promote the land mine cause. The Senate of Canada has been doing its part. On Monday, October 27, our third annual Senators Against Land Mines: Night of a Thousand Dinners will take place right here on Parliament Hill. This year's event will combine exquisite food, a silent auction and a variety of entertainment, including the Singing Senators.

Honourable senators, last year's dinner was extremely successful owing in large measure to your enthusiastic support and participation. I invite all of you to take part once again, and I thank you for contributing toward this important humanitarian cause of helping to free the world from the terrible menace of anti-personnel land mines.

[Translation]

## ROUTINE PROCEEDINGS

### THE ESTIMATES, 2003-04

#### REPORT OF NATIONAL FINANCE COMMITTEE ON SUPPLEMENTARY ESTIMATES (A) PRESENTED

**Hon. Joseph A. Day**, Deputy Chair of the Standing Senate Committee on National Finance, presented the following report:

Wednesday, October 22, 2003

The Standing Senate Committee on National Finance has the honour to present its

#### NINTH REPORT

Your Committee, to which were referred the Supplementary Estimates (A), 2003-2004, has, in obedience to the Order of Reference of September 24, 2003, examined the said estimates and herewith presents its report.

Respectfully submitted,

JOSEPH A. DAY  
Deputy Chair

**The Hon. the Speaker:** Honourable senators, when shall this report be taken into consideration?

On motion of Senator Day, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

• (1420)

## INCOME TAX ACT

### BILL TO AMEND—FIRST READING

**The Hon. the Speaker** informed the Senate that a message had been received from the House of Commons with Bill C-48, An Act to amend the Income Tax Act (natural resources).

Bill read first time.

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the second time?

On motion of Senator Moore, bill placed on the Orders of the Day for second reading two days hence.

[English]

## BANKING, TRADE AND COMMERCE

### COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

**Hon. Richard H. Kroft:** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(a), I move:

That the Standing Senate Committee on Banking, Trade and Commerce have power to sit at 4 p.m. today, even though the Senate may then be sitting, and that the rule 95(4) be suspended in relation thereto.

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

[Translation]

**Hon. Marcel Prud'homme:** Honourable senators, I thank Senator Kroft for coming to my office to explain his intentions since I am a member of the Standing Senate Committee on Banking, Trade and Commerce. However, I am still hesitant about having committees sit at the same time as the Senate. Nonetheless, I told him I would give my consent because the report is ready and we should discuss it. Mind you, we are having a vote at 3 p.m. and there may be a motion.

[English]

The honourable senator is of the opinion that we should follow the spirit that has been regularly adopted such that the Senate will not sit not too late this afternoon. I agree that the Banking Committee may have permission to sit, but if the house continues to sit and certain items come forward, I will not attend the committee; I will stay in the chamber to see what develops. Otherwise, I will fulfil my duty to the Banking Committee.

**The Hon. the Speaker:** Honourable senators, leave is granted. Accordingly, I will put the question.

Is it your pleasure, honourable senators, to adopt the motion?

Motion agreed to.

## OFFICIAL LANGUAGES

### BILINGUAL STATUS OF CITY OF OTTAWA— PRESENTATION OF PETITION

**Hon. Jean-Robert Gauthier:** Honourable senators, pursuant to rule 4(h), I have the honour to table petitions signed by another 2,000 people, for a total of 10,000 people to date, asking that Ottawa, the capital of Canada, be declared a bilingual city and the reflection of the country's linguistic duality.

The petitioners pray and request that Parliament consider the following:

That the Canadian Constitution provides that English and French are the two official languages of our country and have equality of status and equal rights and privileges as to their use in all institutions of the government of Canada;

That section 16 of the *Constitution Act, 1867* designates the city of Ottawa as the seat of government of Canada;

[Translation]

That citizens have the right in the national capital to have access to the services provided by all institutions of the government of Canada in the official language of their choice, namely English or French.

That Ottawa, the capital of Canada, has a duty to reflect the linguistic duality at the heart of our collective identity and characteristic of the very nature of our country.

Therefore, your petitioners call upon Parliament to affirm in the Constitution of Canada that Ottawa, the capital of Canada, be declared officially bilingual, under section 16 of the Constitution Acts from 1867 to 1982.

[English]

## QUESTION PERIOD

### FOREIGN AFFAIRS

#### ASIA-PACIFIC ECONOMIC COOPERATION SUMMIT— PRIME MINISTER—EXPRESSION OF DISAPPROVAL OF MALAYSIAN PRIME MINISTER'S ANTI-SEMITIC COMMENTS

**Hon. A. Raynell Andreychuk:** Honourable senators, I would like to return to questions that I placed yesterday with respect to Mr. Mahathir's statements, which can only be characterized as hate. Could the Honourable Leader of the Government in the Senate explain what the Prime Minister meant when he simply said that the statement of Mr. Mahathir was not well received in

Canada, when, at the same time, Mr. Martin indicated that the statement was terrible and unacceptable? I think Canadians need to know what the Prime Minister meant when he said that it was not well received.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, the Prime Minister made a comment with which we would all agree. The statement was not well received; and it was badly received. Canadians believed that the comment was unjustified and full of disrespect.

Yesterday during Question Period, Senator Tkachuk asked how the official Canadian position was announced. Minister Graham announced it by telephone press conference, which was picked up by the Canadian Press and many other newspapers. Obviously, Mr. Graham could not hold a press conference here because he was in Bangkok. That is how the announcement was made.

As well, officials from the Department of Foreign Affairs met with the High Commissioner of Malaysia because, again, the minister was out of the country. Minister Graham believed it important to give the message immediately and so he asked his officials to do so on his behalf.

**Senator Andreychuk:** Yesterday, the honourable leader indicated that Canada does not advocate regime change as do some other democratic countries. However, it was not intended by me or by anyone on this side of the house to advocate regime change. I think it was Senator Carstairs' statement that Mr. Mahathir would not long be there and someone else would head the government in Malaysia.

The statements made by Mr. Mahathir propagate hate, which leads to violence. Canada has always taken a very strong position, at the United Nations and elsewhere, that we do not tolerate hate statements. The events in Rwanda, if nowhere else, showed us that statements of hate lead to violence and atrocities that this world cannot contain. Surely the Canadian people deserve to hear from their Prime Minister an unequivocal statement that this action is intolerable and must be retracted and that Canada will take action if it is not retracted.

• (1430)

Will the Canadian people hear from the Prime Minister concerning the unacceptability of the Malaysian Prime Minister's statement and will he request a retraction by Mr. Mahathir?

**Senator Carstairs:** The people of Canada have heard that Mr. Mahathir's statement is unacceptable because the Honourable Bill Graham was speaking for the Prime Minister, as he often does on files that are within his purview, and certainly this one was.

As to the future steps we might take, Mr. Graham has made it clear that we have asked the High Commissioner to make our representations very clear to the Malaysian government. We are now awaiting its response about the unacceptability of its prime minister's statement.



**Senator Andreychuk:** Will we follow through with action as we have in Zimbabwe and Nigeria? We did not, incidentally, do so in Indonesia when we invited the head of the Indonesian state to come to the APEC convention in Vancouver at a time when we should have been sending strong human rights signals, not economic signals, to that regime. We all suffered the economic consequences, but the Indonesian people are suffering the ramifications of that regime.

I wonder, upon reflection, whether the Canadian government will now take positive steps to encourage the Malaysian government to act within the standards that are requested and obliged by the United Nations from its members? Malaysia is a member of the United Nations.

We know that both Paul Martin and David Kilgour have made unequivocal representations about Anwar Ibrahim being in jail as a political prisoner. This statement from Mr. Mahathir is not an isolated one. There is a consistent, repeated pattern of disregard for the standards of the international community and for those things that Canadians stand for.

Do we have any assurance that Canada will follow through with action to ensure that the people in both Malaysia and Canada know that hate propaganda cannot be disseminated by any individual and, surely, not by a head of state?

**Senator Carstairs:** Honourable senators, as I indicated to the honourable senator, the Minister of Foreign Affairs is awaiting a response. As far as the rest of her representations are concerned, she can be assured that I will bring them to the minister and the Prime Minister.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, we are trying to find out why the Canadian government is being mealy-mouthed about a statement that is so horrendous that it should have been condemned immediately. Instead, all we hear is that the Minister of Foreign Affairs in Bangkok talked to a few reporters by telephone in Canada. Why did he not hold a press conference in Bangkok and, right away, like Secretary of State Powell, condemn the statement?

We hear that the High Commissioner for Malaysia was called in by officials. Why did they not wait until the Minister of Foreign Affairs was back in Canada to meet with him? Worst of all, the Prime Minister shakes hands with this racist and says, "Well, the Minister of Foreign Affairs has spoken for me." Compare that with Secretary of State Powell immediately condemning the statement and President Bush not hesitating for it to be known publicly that he personally reprimanded the Prime Minister of Malaysia. What is the Canadian government's problem?

**Senator Carstairs:** The honourable senator asks why the Minister of Foreign Affairs did not wait until he got back from Canada. That would have been the wrong thing to do. The correct thing to do was to order his officials to meet immediately with the High Commissioner for Malaysia to put forward our serious concerns and belief of the unacceptability of Mr. Mahathir's statement.

**Senator Lynch-Staunton:** Could the minister tell us which officials met with the High Commissioner and why a communiqué following that meeting has not been issued? We ought to have had a formal announcement that condemnation of that statement was made to the High Commissioner.

**Senator Carstairs:** As the honourable senator knows, I took as notice yesterday Senator Tkachuk's question about who those officials were, and I will get that information to him.

## NATIONAL DEFENCE

### AFGHANISTAN—AVAILABILITY OF ARMoured VEHICLES

**Hon. J. Michael Forrestall:** Honourable senators, preferring to accept the word of the commander in the field in Afghanistan, as opposed to the observations of generals here at home, can I indicate that the commander of the battle group in Kabul had said to the press that he has one third of the armoured vehicles he requires for control? Currently, he has 30 armoured vehicles, according to news reports. The government had said it will ship a further 15. He still has, according to him, a need for 45 more armoured vehicles so that his troops can approach their task in Afghanistan in some degree of safety.

Can the government commit to sending a further 45 armoured vehicles to Afghanistan immediately, or as soon as possible, or do we accept the Prime Minister's suggestion that we will be ready to send some by next summer to "patrol the badlands of Afghanistan"?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, as I indicated to the honourable senator yesterday, we expect the additional LAV III armoured vehicles and the Bisons to arrive in Kabul by mid-November. These requests were made by the chief located in Kabul, and that is what we are doing.

**Senator Forrestall:** Honourable senators, may I ask how many vehicles are going and what is the description? How are we getting them there? When will we send the balance?

**Senator Carstairs:** Honourable senators, as the honourable senator would know, I do not have those details, but I will take his question as notice.

### AFGHANISTAN—PRIME MINISTER'S VISIT—TRANSPORT SECURITY

**Hon. J. Michael Forrestall:** Could the Leader of the Government in the Senate tell honourable senators whether the Prime Minister toured Kabul last weekend in the latest jeep, or did he travel with someone else in a different kind of vehicle?

**Hon. Sharon Carstairs (Leader of the Government):** The security of the Prime Minister was in the hands of the military officers who took him to visit the troops there. I would assume that as they use good judgment with respect to their own troops, so, too, did they use good judgment with respect to the Prime Minister.

**Senator Forrestall:** Is the honourable leader suggesting that he did, in fact, ride in one of those vehicles?

**Senator Carstairs:** Senator, I do not know whether he rode in one of those vehicles or not. I suggested to the honourable senator that the commanders in the field, who know the situation and who take absolute care and caution with their own troops, took the same care and caution with our Prime Minister.

## FINANCE

### POST-SECONDARY STUDENT DEBT LOAD

**Hon. Norman K. Atkins:** Honourable senators, my question is addressed to the Leader of the Government in the Senate. Today, on the grounds of Parliament Hill, the Canadian Alliance's student association has constructed a wall of foam bricks meant to symbolize the wall of debt facing Canada's university and college students upon their graduation. After completing a four-year undergraduate degree, the average debt load per student is now estimated to be between \$20,000 and \$25,000.

A September Statistics Canada report found that as a result of crippling debt and high tuition, post-secondary education is far more likely for children from families that make over \$80,000 than it is for those from families that make less than \$55,000.

Could the Leader of the Government in the Senate tell us what concrete measures the federal government is taking to help ease the heavy debt load confronting our university and college graduates?

**Hon. Sharon Carstairs (Leader of the Government):** The honourable senator asks a question that, I have to say, has been close to my heart for a great many years, as I was President of the National Federation of Canadian University Students at Dalhousie University way back in 1961-62. The issue of student debt and student indebtedness is not new. It was around then. To those who suggest that those who now attend university are from higher income levels, I would suggest that that was even more the case in the 1960s when I went to university.

• (1440)

What kind of concrete steps is the Government of Canada taking? It has entered into negotiations to make student loans more accessible to the students of this country. It has launched the Millennium Scholarship Fund, which is providing more students with scholarships so that they may attend universities. We welcome the initiatives of, and we work with, our provincial counterparts to ease the burden of debt. However, we must clearly recognize that it is becoming higher and heavier, and that much more work needs to be done.

**Senator Atkins:** Honourable senators, is the government aware of the fact that, if a student graduate cannot repay his or her loan, the bank turns those loans over to collection agencies? The abuses that are being perpetrated by these collection agencies on these students are, in my opinion, unconscionable.

**Senator Carstairs:** Honourable senators, I do not know specifically whether the government is aware of that issue, but I will bring it to the government's attention. I can only assume that they are aware of this unconscionable behaviour, since it is part of the policy with respect to student loans. I will certainly make them aware of it, and I would welcome and make available any anecdotal information the honourable senator can provide to me.

### AVAILABILITY OF STUDENT LOANS PROGRAM

**Hon. Norman K. Atkins:** Honourable senators, the Canadian Alliance of Student Associations is calling on the federal government to help reduce student debt load by making improvements to the Canada Student Loans Program. Not every student qualifies for a Canada student loan, which means that more people are turning to private loans, student lines of credit from banking institutions, and credit cards, to pay their way through university. Unlike Canada student loans, private debt is not interest-free while a person is in school and often requires monthly payments, long before graduation.

Has the federal government considered making any changes to the Canada Student Loans Program?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, any changes made to the Canada Student Loans Program must be made in conjunction with the provinces that actually operate those programs. They are not operated directly by the federal government, as I know the honourable senator is aware.

Changes have been made to the Canada Student Loans Program, but there is no question that the honourable senator is absolutely right in saying that more and more of our students are turning to private lenders, and the loans they receive do not have the same protections and conditions as those provided under the Canada Student Loans Program, which loans have no waiver in terms of bursaries, nor do they have time constraints for repayment.

One of the initiatives that I believe the government is considering relates to the amount of time within which students must repay their loans, because these loans are becoming so large.

**Senator Atkins:** Would the government consider a moratorium after graduation of, say, a period of two years, so that students could find employment and become settled before they are faced with paying off these loans?

**Senator Carstairs:** If my understanding is correct, there is a moratorium of six months. If that moratorium needs to be lengthened, I will be pleased to take that idea forward.

## CITIZENSHIP AND IMMIGRATION

### MISSING SUSPECTED WAR CRIMINALS

**Hon. Donald H. Oliver:** Honourable senators, my question is for the Leader of the Government in the Senate.



Fifty-nine suspected war criminals have gone missing in Canada. According to the Chief of Police in Toronto, Julian Fantino, the federal government is doing little to assist law enforcement officials and immigration officials in tracking down these individuals. Citizenship and Immigration Minister Denis Coderre has written a letter to Robert Runciman, Ontario's Minister of Public Safety and Security, stating that the department will not publicly release the names and pictures of these people because of concerns over their privacy rights. Chief Fantino and Mr. Runciman have accused the Department of "an unfathomable lack of cooperation."

Why is the minister unwilling to publicly release the names and photos of these people?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, privacy rights are of concern to all of us. I do not think that one should disparage a comment based on a principle to which we would all aspire.

As to the honourable senator's specific question, I do not have the answer, but I will endeavour to get it for him.

**Senator Oliver:** Honourable senators, in the past, the department has said that it is reluctant to release the names and photographs of war criminals in part because the public may swamp immigration officials with tips on their whereabouts. This seems like something that the department might actually want to encourage, as it may well lead to the capture of some of these individuals.

Could the Leader of the Government in the Senate tell us if the decision to not publicly release the names and photos of the missing war criminals is in any way related to staffing problems in that department?

**Senator Carstairs:** Honourable senators, to my knowledge, it is not related to staffing problems. I share the honourable senator's concern, if, in fact, that is the information that would be provided. One would hope that Canadians would come forward and report people they believe are war criminals, and do so as quickly as they possibly can.

As to the honourable senator's specific question, like the other question, I will have to take it as notice.

## NATURAL RESOURCES

### ONTARIO—INTERNATIONAL THERMAL NUCLEAR EXPERIMENTAL REACTOR BID

**Hon. Consiglio Di Nino:** Honourable senators, the *Toronto Star* of October 20 had an article headlined "Ottawa to let reactor bid die," accusing the federal government of deliberately stalling and delaying a decision to contribute funds to the \$12 billion international thermal nuclear experimental reactor bid by the Province of Ontario, notwithstanding Ontario premier elect Dalton McGuinty's commitment to match federal contributions to this project.

Murray Stewart, the president of ITER Canada, has said: "It's very tough to attack a non-decision." Can the minister shed some light on this issue for us?

**Hon. Sharon Carstairs (Leader of the Government):** I can tell the honourable senator that, to the best of my knowledge, no decision has been made on this file.

**Senator Di Nino:** I thank the minister for her answer.

The article went on to state that the federal stalling, which was confirmed by senior officials, effectively kills any chance for the province to compete next month against bids from other countries. Honourable senators, that implies that a decision has pretty much been made.

Could the Minister let us know whether this is an indication of the federal government's confidence in the newly elected Liberal government in the Province of Ontario to be able to deliver the project?

**Senator Carstairs:** I would point out to the honourable senator a certain inconsistency in the article to which he has referred. You cannot have made a decision and also be stalling. It is one or the other. To reply to the honourable senator's first question, no decision has been made on this matter.

This government takes a great deal of pride and pleasure in the election of a new Liberal government in the Province of Ontario, one that I understand will be sworn into office tomorrow and one with which we look forward to working with closely.

**Senator Di Nino:** Honourable senators, I have a final comment and question. I certainly hope that the minister is correct in suggesting that the decision has not been made. The newspaper article seems to indicate that, at least from its standpoint, senior officials have confirmed that, in effect, a decision has not been made and that stalling is taking place.

• (1450)

However, I hope that the minister is correct in that the decision has yet to be made, as I am sure she will agree with me that Ontario has not only the expertise but the knowledge and ability to be the appropriate place for this kind of a reactor, to serve the needs of the world. I wonder if the honourable senator would comment on that point.

**Senator Carstairs:** I can comment on the fact that I am aware of the project. It is a very interesting one, from a scientific perspective. It is also a very expensive one. A decision will be made in due course.

## THE ENVIRONMENT

### REPORT OF COMMISSIONER OF THE ENVIRONMENT AND SUSTAINABLE DEVELOPMENT— GREEN HOUSE GAS EMISSIONS

**Hon. W. David Angus:** Honourable senators, two weeks ago today, I rose and posed several questions about certain troubling revelations in the recently released report of the Commissioner of the Environment and Sustainable Development, Johanne G  linas.

In the interim, I had an opportunity to study the report in more detail. I regret to note that there exists troubling grounds for concern about the sorry record of this Liberal government on environmental matters. As I said in my earlier questions, the commissioner calls it the "environmental deficit" of the present government.

As a matter of fact, it seems that this environmental deficit extends to the government's so-called strategies for reducing greenhouse gases relating to urban road transportation. In chapter 2, page 7, of her report entitled "The Commissioner's Perspective," the commissioner states as follows: "As my observations continue to indicate, a deficit in performance is partly caused by a gap between the commitments the federal government has made and the results it has achieved."

Could the Leader of the Government in the Senate please comment on this aspect of her government's environmental deficit with respect to the issue of reducing greenhouse gases due to road transportation in urban areas, as outlined in chapter 2 of the report?

**Hon. Sharon Carstairs (Leader of the Government):** As the honourable senator knows, there are a number of new expenditures taking place with respect to the Kyoto Protocol, many of which are directly related to the whole concept of greenhouse gases. We know, for example, of the recent commitments of the Government of Canada to ethanol, something that I suspect is near and dear to the heart of the individual sitting to your right. Certainly, to good Manitobans, it is a very positive step forward. Yesterday, we saw a further commitment on the housing retrofit program.

We have demonstrated leadership on the issue of green vehicles. There are a number of steps that the government is taking. Are we going fast enough? Governments never go fast enough in terms of meeting all the objectives they wish to meet.

**Senator Angus:** Speaking of objectives, I think the leader would agree with that this commissioner, duly appointed by this government, is objective. In chapter 2, she examines specifically the three programs respecting greenhouse gas emissions due to urban road transportation. These programs are as follows: the Canadian Transportation Fuel Cell Alliance program; the Moving on Sustainable Transportation program; and the Intelligent Transportation Systems initiative.

According to the commissioner, all three programs have shortcomings that may prevent them from achieving their long-term expected results. She states that if these shortcomings are not corrected, it will be difficult for the federal government to know the contributions these programs are making to their stated outcomes, which will include reducing Canada's greenhouse gas emissions.

Honourable senators, the government's inability to get it right in the details and the implementation measures of their greenhouse gas reduction commitments goes to the heart of its

credibility on environmental matters, further exacerbating the environmental deficit. Could the Leader of the Government in the Senate provide any additional insight into what her government will be doing to address the serious deficiencies in how these programs are being run?

**Senator Carstairs:** As the honourable senator knows, there was a great deal of additional money for Environment Canada in the last budget. The Kyoto commitment will take considerable new dollars just in the areas that the honourable senator addresses. I think we should also indicate that the commissioner stated in her report that there have been substantial improvements.

Are we where we want to be? I would say, probably not. Are we getting there? Better than we were.

## UNITED NATIONS

### ISRAEL—VOTE TO REQUEST REVERSAL OF CONSTRUCTION OF WALL IN WEST BANK

**Hon. Marcel Prud'homme:** Honourable senators, some time ago, I showed my displeasure on the way we voted at the United Nations on the deportation of Mr. Arafat. This time, I want to show my pleasure at the vote taken yesterday, 144 to 4, demanding that Israel stop and reverse construction of the wall being built in the West Bank.

Regardless of a resolution that was adopted by 144 to 4, seeing that it is leading to more terrorism, destruction and war, could the government call in the ambassador to apprise him of our immense displeasure, as evidenced by yesterday's vote, and repeat it verbally? I think we would have a good equilibrium in our foreign policy.

**Hon. Sharon Carstairs (Leader of the Government):** I thank the honourable senator for his question. Of course, I will bring his representations forward.

## THE SENATE

### INTRODUCTION OF NEW PAGES

**The Hon. the Speaker:** Honourable senators I should like to introduce more of our new pages. We have with us Agnes Kim. Agnes Jung-Min Kim immigrated with her family to Canada when she was eight years old. She spent all of her childhood and teenage years in North Vancouver, British Columbia. She is entering second year at University of Ottawa, studying linguistics. She enjoys meeting new people and learning new languages.

Next is Dustin Milligan. Dustin was born and raised in the small rural community of Tyne Valley, Prince Edward Island. He currently studies history and political science at the University of Ottawa.

Christopher Reed was born in Halifax, Nova Scotia, and raised in Ottawa. He is studying Canadian politics and governance at Carleton University. He is in his third year of university. This is his first year as a Senate page.

Welcome.

**Hon. Senators:** Hear, hear!



[Translation]

## DELAYED ANSWER TO ORAL QUESTION

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I have the honour to lay upon the table a delayed answer to a question raised in the Senate on June 19, 2003, by Senator Stratton regarding the gun control program, blue ribbon panel.

### SOLICITOR GENERAL

#### GUN CONTROL PROGRAM—BLUE RIBBON PANEL

*(Response to question raised by Hon. Terry Stratton on June 19, 2003)*

The primary outside advisory group on the Firearms Program was the Minister's User Group on Firearms. The User Group was established in November 1995. Material announcing the establishment of the User Group indicated that its mandate would run from Royal Assent of the Firearms Act through the implementation period for the new legislation.

With the passing of the registration deadline on January 1, 2003, implementation was largely completed and the mandate of the Minister's User Group on Firearms had been fulfilled. Certain amendments contained in Bill C-10A reflect the deep commitment and recommendations made by members of the User Group, who, over many years, worked to ensure that the Firearms Program is both efficient and effective. The Government of Canada deeply appreciates the dedication and commitment shown by all User Group members. In order to ensure a degree of continuity, three members of the former User Group on firearms have been appointed to the recently announced Program Advisory Committee (PAC). The Program Advisory Committee met for the first time in June 2003, chaired by the Commissioner of Firearms.

The creation of a PAC was one of the government's commitments in the Gun Control Program Action Plan that was announced jointly by the Minister of Justice and the Solicitor General on February 21, 2003.

Since the announcement, important progress has been made in strengthening and streamlining the Canadian Firearms Program.

A strengthened Canada Firearms Centre (CAFC) senior management team is in place. Amendments to Bill C-10A, originally introduced in March 2001, have received Royal Assent and consequential regulatory proposals were tabled in both Houses of Parliament in June 2003.

Firearms licence and registration processing is meeting publicly posted service standards. Internet firearms registration, application status checks and online firearms transfers are well received by system users.

#### Working groups and consultations

A number of ad hoc consultative groups were established in the year 2000 to assist the Canada Firearms Centre in meeting the licensing deadline of January 1, 2001, and the registration deadline of January 1, 2003. In addition, these groups were consulted on measures to streamline program administration, some of which were included in amendments passed as part of Bill C-10A. A firearms users' forum, including members of the former User Group on Firearms, wildlife and firearms organizations, focussed first on licensing compliance issues and later shifted its focus to registration. Other consultations conducted during this period, included police fora, and meetings with firearms manufacturers, importers and exporters.

The National Firearms Technical Committee was established as a result of work done by the firearms users' licensing and registration groups. The technical committee played a key role in the amendments proposed in measures contained in Bill C-10A concerning airguns.

This fall, the Canada Firearms Centre is undertaking consultations with the public, firearms owners and other interested Canadians and stakeholder organizations, as was committed to in the February, 2003 Action Plan. Regulations have been tabled for review by both Houses, and this will provide an opportunity for input to be received from Parliamentarians.

The Canada Firearms Centre also continues to work with aboriginal communities to ensure that the program is administered in a manner that reflects their distinct needs.

#### Working with governmental partners

The delivery of the Firearms Program requires the involvement of federal and provincial officials. There are two governmental processes that are utilized to ensure federal involvement which are not consultations but rather meetings of federal and/or provincial partners.

First are meetings with provincial Chief Firearms Officers, which are ongoing and essential to program effectiveness.

Second, the CAFC continues to work closely with the RCMP and other federal partners, including the Department of Foreign Affairs and International Trade, and the Canada Customs and Revenue Agency. This working relationship is required to ensure that the Firearms Program is delivered as efficiently and effectively as possible.

### Combating firearms smuggling

Following a recommendation from the Auditor General of Canada, a national working group was established in April 1994 to undertake a review of the firearms smuggling problem. As a result, in May 1995 the federal government announced the creation of a National Working Group on the Illegal Movement of Firearms (NWGIMF), under the Minister of Justice, to address policy and program issues relating to firearms enforcement.

In April 1997, the Core Group on the Illegal Movement of Firearms was established to further promote and support inter-agency co-operation and co-ordination in firearms control, complementing the current criminal intelligence and law enforcement work at the federal, provincial and local levels. The core group was comprised of members from Canada Customs and Revenue Agency, the RCMP, the Department of Justice as well as key police representation from Quebec, Ontario and B.C. Funding was extended for three years.

As a result of consultation with the policing community conducted by the Core Group, it was evident that there was a lack of investigative support to front-line police officers dealing with the criminal movement and use of firearms.

In January 2001, the Justice Minister announced the establishment of the National Weapons Enforcement Support Team (NWEST). NWEST is not an advisory group. It is composed of trained and experienced individuals who work in a support role with local law enforcement, to assist in anti-trafficking and anti-smuggling efforts. In April 2003, responsibility for NWEST was transferred from the Department of Justice to National Police Services, which are administered by the RCMP on behalf of all police forces in Canada.

[English]

### BUSINESS OF THE SENATE

**The Hon. the Speaker:** Honourable senators, it being 3 p.m., pursuant to the order adopted by the Senate on October 21, 2003, I must interrupt the proceedings for the purpose of putting the question on the sub-amendment of the Honourable Senator Di Nino to Bill C-25.

The bells to call in the senators will now be sounded for 30 minutes, so that the vote may take place at 3:30 p.m.

Call in the senators.

• (1530)

### PUBLIC SERVICE MODERNIZATION BILL

#### THIRD READING— MOTION IN SUB-AMENDMENT NEGATIVED

On the Order:

Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Harb, for the third reading of Bill C-25, to modernize employment

and labour relations in the public service and to amend the Financial Administration Act and the Canadian Centre for Management Development Act and to make consequential amendments to other Acts,

And on the motion in amendment of the Honourable Senator Beaudoin, seconded by the Honourable Senator Comeau, that the Bill be not now read a third time but that it be amended in clause 12, on page 126, by replacing lines 8 to 12 with the following:

**“30. (1) Appointments by the Commission to or from within the public service shall be free from political influence and shall be made on the basis of merit by competition or by such other process of personnel selection designed to establish the relative merit of candidates as the Commission considers is in the best interests of the public service.**

(1.1) Despite subsection (1), an appointment may be made on the basis of individual merit in the circumstances prescribed by the regulations of the Commission.

(2) An appointment is made on the basis of individual”.

On the sub-amendment of the Honourable Senator Di Nino, seconded by the Honourable Senator Nolin, that the motion in amendment be amended

(a) by replacing the words “on page 126, by replacing lines 8 to 12” with the following:

“(a) on page 126, by replacing lines 8 to 11”;

(b) by adding after the words “free from political influence” the following:

“and bureaucratic patronage”; and

(c) by replacing the words “of the Commission. (2) An appointment is made on the basis of individual” with the following:

“of the Commission.”; and

(b) on page 127, by adding after line 9 the following:

**“(3) The qualifications referred to in paragraph 30(2)(a) and subparagraph 30(2)(b)(i), and any qualification standards referred to in subsection (1), that are established for an appointment in respect of a particular position or class of positions shall apply to future appointments in respect of that position or class of positions, unless any change established by the deputy head or employer to the qualifications or qualification standards, as the case may be, is approved by the Public Service Commission.”.**



Motion in sub-amendment negated on the following division: [Translation]

YEAS  
THE HONOURABLE SENATORS

Andreychuk  
Atkins  
Beaudoin  
Buchanan  
Cochrane  
Di Nino  
Doody  
Forrestall  
Gustafson  
Johnson  
Lawson

LeBreton  
Lynch-Staunton  
Meighen  
Nolin  
Oliver  
Prud'homme  
Robertson  
Roche  
Spivak  
Stratton  
Tkachuk—22

NAYS  
THE HONOURABLE SENATORS

Adams  
Bacon  
Banks  
Biron  
Bryden  
Callbeck  
Carstairs  
Chalifoux  
Christensen  
Cook  
Cools  
Corbin  
Cordy  
Day  
De Bané  
Fairbairn  
Ferretti Barth  
Finnerty  
Fraser  
Furey  
Gauthier  
Gill  
Grafstein  
Graham  
Hervieux-Payette  
Hubley  
Joyal

Kenny  
Kirby  
Kolber  
Kroft  
LaPierre  
Lapointe  
Lavigne  
Maheu  
Massicotte  
Merchant  
Milne  
Moore  
Pearson  
Pépin  
Phalen  
Plamondon  
Poulin  
Poy  
Ringue  
Robichaud  
Rompkey  
Sibbeston  
Smith  
Sparrow  
Stollery  
Watt—53

ABSTENTIONS  
THE HONOURABLE SENATORS

Nil

## ORDERS OF THE DAY

### BUSINESS OF THE SENATE

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, it is Wednesday, a day on which we usually try to end the sitting a bit earlier to allow the committees to meet. I would like to wrap up items under Government Business, and the remaining items on the Order Paper can be stood until the next sitting.

### COMMITTEES AUTHORIZED TO MEET DURING SITTING OF THE SENATE

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I would also seek agreement to allow the committees set to meet at this time to do so during the sitting of the Senate.

[English]

**The Hon. the Speaker:** Is leave granted?

**Hon. John Lynch-Staunton (Leader of the Opposition):** Leave is granted, but I would like to make a suggestion. There is a private bill that came from the other place on user fees. It now stands in Senator Kinsella's name. He has informed me that he has no objection, after studying it, to referring it to committee. If we could bring that private bill up before we adjourn, there would be no objection on this side.

**Senator Robichaud:** I want to make clear that it is well understood that committees are allowed to sit now even though the Senate is still sitting.

**The Hon. the Speaker:** That has been agreed to.

**Hon. Marcel Prud'homme:** On the same point, it is very clear that there is government business, plus the one item mentioned by our friend Senator Lynch-Staunton. I have no problem with that.

• (1540)

### CANADA-EUROPE PARLIAMENTARY ASSOCIATION

#### ANNUAL MEETING OF ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, JULY 5-9, 2003—REPORT TABLED

Leave having been given to revert to Tabling of Reports from Inter-Parliamentary Delegations:

**Hon. Jeremiah S. Grafstein:** Honourable senators, I have the honour to table, in both official languages, the report of the Canadian delegation of the Canada-Europe Parliamentary Association to the Organization for Security and Co-operation in Europe Parliamentary Assembly, OSCE, annual session in Rotterdam, The Netherlands, July 5 to 9, 2003.

## PUBLIC SERVICE MODERNIZATION BILL

### THIRD READING—MOTION IN AMENDMENT— VOTE DEFERRED

On the Order:

Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Harb, for the third reading of Bill C-25, to modernize employment and labour relations in the public service and to amend the Financial Administration Act and the Canadian Centre for Management Development Act and to make consequential amendments to other Acts,

And on the motion in amendment of the Honourable Senator Beaudoin, seconded by the Honourable Senator Comeau, that the Bill be not now read a third time but that it be amended in clause 12, on page 126, by replacing lines 8 to 12 with the following:

“30. (1) Appointments by the Commission to or from within the public service shall be free from political influence and shall be made on the basis of merit by competition or by such other process of personnel selection designed to establish the relative merit of candidates as the Commission considers is in the best interests of the public service.

(1.1) Despite subsection (1), an appointment may be made on the basis of individual merit in the circumstances prescribed by the regulations of the Commission.

(2) An appointment is made on the basis of individual”.

**Senator Robichaud:** Question!

**The Hon. the Speaker:** Is the house ready for the question?

**Some Hon. Senators:** Question!

**The Hon. the Speaker:** It was moved by the Honourable Senator Beaudoin, seconded by the Honourable Senator Comeau, that the bill be not now read the third time but that it be amended in clause 12 on page 126.

**Some Hon. Senators:** Dispense.

**The Hon. the Speaker:** Those honourable senators in favour of the motion in amendment by Senator Beaudoin will please say “yea.”

**Some Hon. Senators:** Yea.

**The Hon. the Speaker:** Those honourable senators opposed to the motion in amendment will please say “nay.”

**Some Hon. Senators:** Nay.

**The Hon. the Speaker:** I believe the nays have it.

*And two honourable senators having risen:*

**The Hon. the Speaker:** Call in the senators.

**Hon. Terry Stratton:** Honourable senators, I should like to defer the vote until tomorrow at 3:30 p.m. with a half hour bell.

**Hon. Bill Rompkey:** Honourable senators, I was about to make the same proposal.

**The Hon. the Speaker:** It is it agreed, senators?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** There will be a vote on the motion in amendment tomorrow at 3:30 p.m. with the bells to ring at 3 p.m. by order of the house.

## PARLIAMENT OF CANADA ACT

### BILL TO AMEND—SECOND READING— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Graham, P.C., for the second reading of Bill C-34, to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence.

**Hon. Serge Joyal:** Honourable senators, the debate on Bill C-34 is a subject that has occupied the minds of all honourable senators for a number of months now. There is nothing more important for the sake of public governance than ethical standards for those who are governed and those who govern.

Speaking to the U.S. Congress in 1961, President Kennedy said that no responsibility of government is more fundamental than the responsibility of maintaining the highest standards of ethical behaviour by those who conduct the public's business. He went on to state that the basis of effective government is public confidence, and that confidence is endangered when ethical standards falter or appear to falter.

We all know the origin of this bill, and we had an opportunity on the previous government motion to express ourselves on the appropriateness of this house, at this point in time, to legislate on ethics.

This bill is important because it is an institutional bill. It is not an administrative bill, nor is it a financial bill. It is an institutional bill that deals with one of the two Houses of Parliament and with the necessary independence of our house to be able to function effectively.

When the Fathers of Confederation agreed on the establishment of a Canadian Senate, they devised a very particular system. I would like to quote Sir John A. Macdonald cited in Professor Janet Ajzenstat's chapter in her book, “Protecting Canadian Democracy: The Senate You Never



Knew," which was released earlier this year. Sir John A. Macdonald had a most acute perception of the principles that should govern our house, the Senate. He said:

There would be no use of an upper house if it did not exercise...the right of opposing or amending or postponing the legislation of the lower house.

Our first Prime Minister went on to add, in respect of this chamber:

It must be an independent house...for it is only valuable as being a regulating body, calmly considering the legislation initiated by the popular branch, and preventing any hasty or ill considered legislation...

In that context, his thoughts were echoed by George Brown. George Brown was of exactly the same opinion. He said that the desire was to render the upper house a totally independent body, one that would be in a position to canvass dispassionately the measures of the House of Commons and stand up for the public interest in opposing any hasty or partisan legislation.

In other words, independence is one of the fundamental characteristics of this house. Honourable senators, this bill impinges on the independence of our house. It is important that, before we vote on it, we should, as the quote from Sir John A. Macdonald reminds us, give the impact of this bill some sober second thought.

This bill has a legitimate objective, as I mentioned earlier, which is to increase the trust and confidence of the public in our system of government. No senator will dispute that objective. However, if this bill is applied as it is drafted, it would weaken the independence of this house and the capacity of our house to exercise its constitutional role in relation to the study of legislation and the scrutiny of government.

We must not allow the principle of independence to be devalued. The architects of our Constitution were unambiguous on the kind of Parliament they envisaged for Canada. They very clearly, in the preamble of our Constitution, expressed the desire of the representatives of what was then British North American to be united under one dominion with a constitution similar in principle to that of the United Kingdom.

• (1550)

What does "similar in principle" mean in relation to the bill under consideration? It means that both Houses of Parliament in the new Dominion of Canada would have the same rights powers and privileges as those enjoyed by the British House of Commons at the time of Confederation, including — and this is fundamental — that each House be the sole master of its internal affairs. Its origins predate the Bill of Rights of 1689. We must remember that struggle between the Commons and the

king over Parliament's capacity to rule its affairs, free from the meddling of monarchs and magistrates. This is a defining principle of Parliament. The Bill of Rights, 1689, is part of the law we received under the preamble of the Constitution Act, 1867. Article 9 of the Bill of Rights, 1689, is quite simple. It reads:

That the freedom of speech, and debates or proceedings in parliament, ought not to be impeached or questioned in any court or place out of parliament.

Honourable senators, this means that, when we exercise our duty to legislate, we have the fundamental right not to be impeached by, I quote, "any court or place out of parliament."

Article 9 has been discussed in many textbooks on the British Constitution and the Canadian Constitution. Essentially, it is the affirmation of control by Parliament — in this case, by the Senate — of its affairs, free from interference by the courts, often called "exclusive cognizance of parliamentary business." Thus, it is up to parliamentarians to decide how they will perform their duty.

Those who have studied the Bill of Rights, 1689, understand that Parliament must have sole control over all aspects of its own affairs, to determine its own procedures and the discipline of its members.

Indeed, acceptance by the executive and judicial branches of Parliament's undisputed right to make its own rules and procedures is on par with the right of legislators to freedom of speech. Clearly, honourable senators, parliamentarians must have freedom of speech, for if they cannot speak freely, there can be no Parliament. According to article 9 of the Bill of Rights, the control of our own affairs is as important as the principle of freedom of speech. This must be paramount in our minds when we examine this bill, which I am coming to now.

Bill C-34 has a legitimate objective, which is to ensure that we establish a balance between the public trust in Parliament and the privacy rights of its members. The bill should seek to reconcile those two objectives in proposing an approach to legislate ethics. The various clauses of this bill that deal with the Senate are few — not more than four pages. In reading the clause in respect of the appointment of the ethics commissioner, honourable senators will immediately conclude that something new will happen. That something new is the loss of control by this house of its internal affairs, owing to the appointment of the ethics commissioner.

In respect of this, proposed section 20.1 of the bill states:

The Governor in Council shall, by commission under the Great Seal, appoint a Senate Ethics Officer after consultation with the leader of every recognized party in the Senate and after approval of the appointment by resolution of the Senate.

Honourable senators, that means the government would consult with the leaders of the recognized parties, after which a resolution would be introduced. Following the adoption of that resolution, the ethics officer would be appointed.

What does this mean in practical terms? This house has dealt with the appointment of officers of Parliament on the nomination of the Prime Minister. The nomination is canvassed in internal caucuses and then its confirmation becomes a matter of confidence in the Prime Minister. Of course, there is also the whip, and what is the whip's argument? The Prime Minister wants it. If the Prime Minister wants it, then you vote for it. That has been my experience in the past.

What does "approval of the appointment by resolution" mean? It means that, of 105 senators, 53 senators must approve the appointment. What about the other 52 senators? What happens to those senators who do not agree with the appointment of the person to whom they will not only have to open their hearts but also their pockets and their files in an unprecedented way? There is no parallel in the professional private sector with the responsibility that this ethics officer will have. It will entail much more than the declaration in an income tax file, honourable senators. It may go beyond what one might even declare to his or her spouse, because, in our common law regime, each partner is the master of his or her own affairs.

Bill C-34 proposes, after consultation — which is not agreement — the appointment of an ethics officer that, in reality, as many as 52 senators may not want and in which they have no trust. I contend, honourable senators, that each one of us should have equal trust and equal confidence in the person with whom we will open our files.

The Governor in Council, which is the cabinet, would initiate the consultation and, through majority rule in this chamber, would impose the appointment. Honourable senators, this would impinge on our individual capacity to rule our own affairs.

In reading the bill, honourable senators will see that it takes the same direction. Proposed section 20.2 of the bill states that the Governor in Council may remove the ethics officer upon an address of the Senate. Thus, we are not even masters of the future role of the proposed ethics officer, should we lose confidence and trust. We would have to ask cabinet to remove the officer. Proposed section 20.2(2) states that, if that ethics officer is incapable or is absent, then it is the Governor in Council alone who finds a replacement, with no consultation and with no concurrence. In other words, a kind of tutorship of the Senate under cabinet rule who would be the temporary replacement. Proposed section 20.3(1) states that the government would establish remuneration for the officer.

Proposed section 70.06 of the bill —

**The Hon. the Speaker *pro tempore*:** Honourable senators, I regret to inform Senator Joyal that his time has expired.

**Senator Joyal:** Honourable senators, I would ask leave to continue.

**Hon. Senators:** Agreed.

• (1600)

**Senator Joyal:** Thank you, honourable senators.

I will try to conclude as soon as possible, and I will not take any questions so that we reduce the time of this house. It is not because I am afraid of taking questions, believe me — we will have other opportunities, I am sure, to continue the debate — but for the sake of the business of the house today, I will be brief.

Proposed section 72.06 of the bill as drafted puts our ethics officer under the control of the ethics officer of the other place in terms of his own conflict of interest guidelines. In other words, honourable senators, again I express my views that ethical standards are essential to maintain public confidence. However, that should not be at the expense of the capacity of the Senate to rule its own internal affairs unfettered by the Crown as enshrined in those fundamental principles that we have in our Constitution. We have the capacity to perform our duty as we see fit and proper on the basis of our own judgment on each bill and on each issue that is in front of us.

If we go back to the Oliver-Milliken report, we find that Oliver-Milliken saw that problem. Let me quote recommendation 2 of the report:

After consultation with the leaders of the recognized parties in the Senate and...such other persons..., the Speaker shall table a nomination in the Senate....

That is totally different from what is in this bill. The initiative comes from our Chair, and our Chair has to retain the confidence of this house. That recommendation comes from the Oliver-Milliken report. I think that it is a sound solution, which is why I have prepared an amendment to this aspect of the bill. The proposed amendment would read:

The Senate shall, by resolution and with the consent of the leaders of all recognized parties in the Senate, appoint a Senate ethics counsellor.

Of course, I understand that we are at second reading so I cannot table an amendment, but that is the gist of my proposal — the Senate shall, by resolution and with the consent of the leaders of all recognized parties — so that the rights of the other side are protected. We may find ourselves on the other side 10 years from now, as we were 10 years ago, in the minority position. That is something I would like to remind my colleagues of.

It is a very important principle, because once we go overboard with this, we lose control over the person who will be charged, for now, with giving us the advice — advice to which we will be bound. This is the first important element that we should balance in this bill before moving on.

Another aspect in this bill is of great concern to me. It is the section of the bill that provides that the ethics counsellor, or officer, will be acting under the privileges of Parliament. The Honourable Leader of the Government spent a great length of



time in her speech earlier this month trying to show that the future ethics counsellor will be acting within the confines of parliamentary privilege and, as such, will be immune from court intervention. I think this proposal of the government, unfortunately, does not meet the constitutional test.

What is the constitutional test? It is included in section 18 of the Constitution Act, 1867. What does section 18 say? It states, essentially, that we in the Senate enjoy the same privileges that, by act of Parliament, we can grant ourselves. However, one limit, one condition, is provided; that they do not exceed those that existed in the United Kingdom House of Commons at the time of Confederation.

What does that mean? It means that we, as a Parliament, can enact through legislation that the future ethics officer will be acting within the privileges of this house. That is to say, the court would not be able to review that. However, when we do that, when we legislate that, we have to ask ourselves: "What exists in the British House of Commons? Do they have those privileges?" The answer is no, they do not have those privileges.

I want to quote the joint committee of the House of Lords and the House of Commons, which released its report in 1999. That is not a long time ago. The Joint Committee on Parliamentary Privilege laboured for two years to review the status of parliamentary privilege in the British Parliament.

What did that committee have to say about the privileges over their own registry of interests? They have a commissioner of public standards, who would act on a similar basis to our proposed ethics commissioner.

The committee cited the 1990 case of *Ross v. Edwards* in its conclusion that the registry of interests, which is their version of the ethics commissioner, is not protected by privilege.

Let me quote the *Ross* decision:

This case, that since the register of members' interests was a public document, the court would not be astute to find a reason for ousting its jurisdiction, and, therefore, unless and until Parliament enacted that the register was privileged, the court will not rule against the admission of evidence on the practice and procedure for the registration of members' interests.

That is the status of the law of parliamentary privilege in Great Britain. If we legislate to protect the role and the status of our ethics commissioner, we cannot go beyond the historic rights of the British Parliament. This is so much so that the joint committee concluded in section 11 of their recommendations:

The registers of members' interests and related proceedings should be declared by statute to be proceedings in Parliament.

What does that mean? It means they recognize that they have not legislated, and since they have not legislated, we cannot legislate to give us the same protection. Honourable senators

might find it odd, but this is the status of the law. As long as they have not legislated, or we have changed our Constitution, those are the parameters on our capacity to legislate in this regard.

Therefore, the proposed section of the bill that deals with the protection of the activities of our ethics officer is not protected. This is a fundamental point because, as honourable senators will remember, when we legislate on this we want to be sure that we maintain a fair distance with the courts and with the government, such that we can monitor our internal affairs.

• (1610)

Another aspect of this bill raises concerns. In the English version, proposed section 20.1 says:

The Governor in Council shall, by commission under the Great Seal, appoint a Senate Ethics Officer...

In the English version of the bill, the word "officer" is used. The French version is quite different. In the French version, it says "conseiller sénatorial en éthique." We all know the difference between an officer and a counsellor. A counsellor is somebody who gives advice, whereas an officer is somebody who speaks with authority. In fact, Carswell — which is a legal dictionary — defines an officer as someone in a capacity of authority. That is different from a counsellor. A counsellor is someone from whom one asks for advice. An officer is somebody who has the authority.

I contend that the proper concept is counsellor, not officer. In my humble opinion, honourable senators, the concept of officer, which is found at different places in the bill, is confusing. For instance, clause 20.4(3) of the bill states:

The Senate Ethics Officer may employ any officers and employees and may engage the services of any agents...for the proper conduct of the work of the office of the Senate Ethics Officer.

That it is not at all the concept of officer of Parliament we have been referring to. It is important, legally, if we accept the concept of a counsellor, that it be clearly stated in the bill.

[Translation]

We are referring to two completely different realities.

[English]

Even in the English text, it is confusing. What is the officer we are talking about? The word "officer" is used in clause 20.5, when it talks about carrying out the duties and functions of the office as members of the Senate. Everybody is an officer, and the officer employs officers.

Honourable senators who are familiar with legal text will recognize a discrepancy of concept. It is very important that we all have the same understanding in this bill.

Therefore, honourable senators, this bill needs some thorough sober second thought, if it is to conform to the principles we want to serve. As it is currently drafted in the first section, all the weight is on the ethics officer; the senator has no status, no protection.

**Senator Cools:** That is right.

**Senator Joyal:** In its current form, the proposed legislation requires a senator to open his or her books, files, wallets, and bank accounts, to disclose debts and assets. Hence, honourable senators, we must ensure that honourable senators trust the person with whom they will be dealing.

Honourable senators, there needs to be balance in this bill. The conversations and exchanges that take place between senators and the Senate ethics officer must be protected, and the bill should be amended in that regard. In other words, communications in confidence between senators and the Senate ethics officer, in the course of performing his or her duties, must be treated as privileged, in the same way that solicitor-client communications are treated in confidence.

In other words, honourable senators, when meeting with the ethics counsellor, a senator should be guaranteed the same confidentiality protections he or she would receive in a solicitor-client relationship. This it is very important, because there have been examples in the recent past of leaks, and we have read about them in the papers and the media. I do not think that any one of us would like to see that, especially at this very moment.

In order to protect the interests of senators, there should be a method to recognize that a senator who follows the advice and recommendations of the ethics counsellor complies totally with his or her responsibility under his or her ethical obligation. If there is an allegation outside the relationship between the two, the senator has totally satisfied his obligations.

We have laboured on this bill, or the concepts enshrined in it, for a long time, but I sincerely advise honourable senators that those issues are fundamental to the future of this chamber.

I want to repeat that I am not opposed to a code of conduct for senators. I am not opposed to an adviser for senators. I am not opposed to the fact that we would maintain the continuity of that function. However, I want to ensure that we in this chamber remain in control of the internal affairs that are so fundamental for the maintenance of our capacity to perform our constitutional duty. If we are to assume some obligations that are exceptional, we need some protection so that the two objectives are fairly balanced.

Honourable senators, I know I have spoken at length this afternoon. The legal text of what I have been proposing will be circulated. There is an opportunity here, honourable senators, to improve this bill, in a way that the fundamental objectives are met and fully satisfied in the full respect of equality and trust that each one of us in this chamber should enjoy and of course, protect.

**Hon. Joan Fraser:** Honourable senators, it is always a hard act to follow Senator Joyal. Senator Joyal himself followed Senator Oliver, who is another hard act to follow in these matters. Nonetheless, I should like to use this opportunity, if I may, to explain to honourable senators why I support this bill — not just the principle of it but the actual fact of it.

As I have said a number of times before, the creation of a modern ethics regime for the Senate is an idea whose time has come. I believe that that is what modern legislatures need to do, including this one. It is one of the essential steps we need to take to maintain public confidence in the integrity of our institution.

• (1620)

This bill is a crucial first step in that process. It is, however, only a first step. Let us be very clear about what this bill does and what it does not do.

Bill C-34 does not set up an ethics regime. It provides, as far as the Senate is concerned, for the establishment of a Senate ethics officer, but it does not even say what his job will consist of because we, and only we, are the ones who will decide that.

As an aside, I will make a note following from Senator Joyal's interesting comments about the word "officer." For those senators who are not aware of the discussions in the Standing Committee on Rules, Procedures and the Rights of Parliament last spring, the word "officer" is there because it is taken directly from the unanimous report of the Rules Committee. The Rules Committee used the word "officer" because it was casting around for a word that would be completely neutral. We did not want to talk about a "commissioner" or use any number of other words because we wanted to ensure that we were not conveying independent authority on this person that would erode the rights, privileges and independence of this chamber. Therefore, we came up with the word "officer."

The drafters of this bill, who, as the Leader of the Government has pointed out, worked hard to accommodate all of the Senate's points in that report, included that word. That was the word of the Rules Committee. There is nothing mysterious or nefarious about it at all.

I have heard some senators suggest that we do not actually need to act in this field immediately because there is no problem. We do not have a ethics problem in the Senate, therefore, there is no need to act.

I think that is true. We do not have an ethics problem in the Senate. I am proud to serve with colleagues in this chamber, as I know we all are. However, I would suggest that there is no better time to act than precisely when there is no problem because it is when there is no problem that one can examine issues in a dispassionate manner, rather than making decisions based on reaction to a specific circumstance. That may not result in wise decisions and would likely be perceived by the public as defensive rather than dispassionate and dedicated to the integrity of government.



This proposal, as has been noted, has changed a great deal in the year since it first came to us. It has changed for the better in large measure because of the Senate. We pointed out serious problems with the original proposition, and we were heard.

Honourable senators, the most important single change from our point of view is that this proposal no longer lumps the Senate in under a general ethics regime. It gives us full control over our own separate and independent ethics regime. That is vital. I know that every senator cherishes that which Senator Joyal so rightly called the necessary independence of our house. That was an essential change, and it has been made.

Some senators, however, have serious, legitimate concerns — the issue is serious — about the unintended consequences of providing for an ethics officer through a statute rather than through a resolution of this chamber. As Senator Joyal has so eloquently suggested, some senators fear that, in so doing, we would create the risk of erosion of our privilege, rights and independence through intervention by the courts.

It is a serious matter. It is a serious question and one that we have to look at carefully. I have tried to do so.

Let me tell honourable senators why, after considerable reading and reflection both in the Rules Committee and on my own, I have come to the conclusion that I do not share these concerns in the context of this bill.

First, honourable senators, there is in fact nothing new about having the courts examine the nature and extent of parliamentary privilege. They have been doing that not for decades, but for nearly two centuries —

**Senator Cools:** Nonsense!

**Senator Fraser:** The main case that set the standards in these matters was *Stockdale v. Hansard*, which was decided in 1839. In *Stockdale v. Hansard*, a British court confirmed that it had the right to examine the extent of privilege. It stated — and this is an interesting point — that it was not sufficient for the House of Commons alone to determine what parliamentary privilege is, which would presumably apply *mutatis mutandis* to the other House of Parliament. That suggests to me that we might be on shakier ground simply passing our own resolution than we would be by adopting a statute that had been formally debated and passed by the whole of Parliament — the House of Commons, the Senate and the Crown.

However, the main point is that we cannot evade the notion that courts will examine how far our privilege runs. It is inescapable. They will. That is what courts do. Courts examine legal matters.

The question then is: Are we doing this in a way that will protect our privileges? It seems to me very clear that we are.

I shall quote from the text of the bill, proposed section 20.5(1):

The Senate Ethics Officer shall perform the duties and functions assigned by the Senate...

No other duties and functions are assigned to the Senate ethics officer other than those duties and functions that we, after deliberation, decide to assign to the ethics officer. I read from the bill again.

20.5(2) The duties and functions of the Senate Ethics Officer are carried out within the institution of the Senate. The Senate Ethics Officer enjoys the privileges and immunities of the Senate and its members when carrying out these duties and functions.

That is a clear assertion of privilege in a statute.

20.5(3) The Senate Ethics Officer shall carry out those duties and functions under the general direction of any committee of the Senate that may be designated or established by the Senate for that purpose.

20.5(5) For greater certainty, this section shall not be interpreted as limiting in any way the powers, privileges, rights and immunities of the Senate or its members.

Honourable senators, it seems to me that we have not just a belt and suspenders but a belt and suspenders and buttons and zippers. Several sets of safeguards have been established over and over again, unmistakably.

The structure that is proposed here — the establishment in statute of an ethics officer who then advises or works under the direction of a legislature — is not some new or novel concept that was dreamed up the other day in an Ottawa office. It is the structure that exists in almost all the provinces. The mere fact that the provinces do it does not mean we should do it, but it does mean that there is a body of history that we can examine to see how it works. Indeed, the Rules Committee heard from some provincial and territorial ethics commissioners. They were clear that in their experience, both in practice and before the courts, parliamentary privilege has not been eroded in any way by the fact that the position was created by statute.

• (1630)

The *Roberts* case in the Northwest Territories, to which Senator Oliver referred yesterday, did not involve the activities of the ethics officer. It dealt with the way in which the Northwest Territories decided to fire their ethics officer. The courts concluded that the government had not followed the established procedures for firing him. They did not say, "You cannot fire him," but they did say, "You've got to do it the way you said you were going to do it." That is very different from saying parliamentary privilege is eroded and Parliament can no longer decide its own fate, rules and practices.

It is perhaps worth quoting a passage from one of the key cases cited often in these matters, the *Tafler* case in British Columbia. The British Columbia Court of Appeal said that it was noteworthy, first, that the commissioner was an officer of the assembly; second, that the commissioner's obligation was to report his opinion to the assembly, and thereafter, if he considered it proper to do so, to make a recommendation with respect to discipline of the member, but not himself to reach any enforceable decision. The court said that the actual decision on any question of conflict of interest is made by the assembly itself.

If we, in step two of our process of establishing an ethics regime, just instruct our ethics officer — once we have one — that he or she make no decisions, but simply report to the Senate and leave the decisions to the Senate, we would be doing exactly what was set out in *Tafler*, and our privileges would, as far as I can see, remain utterly unimpeded.

Incidentally, the *Tafler* case was decided in 1998. As a recent case, I think it is quite pertinent.

I believe we will have an ethics officer who will do what we tell him or her to do, and what we will tell him or her to do, I trust, is give us advice, make recommendations, but make no decisions. Thus, we would preserve what all authorities, whether they be jurists, political scientists or simple parliamentarians, agree is our own undisputed right to make and enforce our own rules.

However, I repeat, that is step two. Step one is to pass a bill that has a provision for the appointment of an ethics officer. Then he or she will do what the Senate tells him or her to do. I see no danger at all to us in adopting such a system. In fact, I see great advantages in adopting it.

Canadians have seen Parliament come to the brink of disaster so many times in ethics matters, and they have become very cynical about the fact that we have never appointed an ethics commissioner. It is time for us to do it.

This is a simple bill, as far as the Senate is concerned, but it has been the subject of a year's discussion in this place. It has been passed by the other place. Honourable senators, this is not a rush to judgment, but it is time for us to move forward.

**Hon. Anne C. Cools:** Would the honourable senator take a question?

**The Hon. the Speaker:** You have one minute.

**Senator Fraser:** I will take one minute's worth of questions.

**Senator Cools:** Could the senator tell us what process this Senate can use to ensure that the government brings us ethical legislation to vote upon? Many in this chamber do not believe that this particular ethics bill is an ethical bill.

**Senator Fraser:** Honourable senators, all senators have the right and the duty to reach their own conclusions. It is my conclusion that this is an extremely ethical bill. However, in this or any other case, if we do not approve of what anyone — be it the government

or a private member — proposes, then we consider the legislation in that light. This legislation, in my view, passes the test with flying colours.

**Senator Cools:** Would the honourable senator tell us why this bill —

**The Hon. the Speaker:** I regret to advise that Senator Fraser's time has expired.

**Senator Cools:** The honourable senator could ask for more time. We would be pleased to continue the debate.

**Hon. Terry Stratton:** I should like to adjourn the debate in the name of Senator Beaudoin.

On motion of Senator Stratton, for Senator Beaudoin, debate adjourned.

[Translation]

## AMENDMENTS AND CORRECTIONS BILL (2003)

### SECOND READING—SPEAKER'S RULING

On the Order:

Second reading of Bill C-41, to amend certain Acts.—(*Speaker's Ruling*).

**The Hon. the Speaker:** Honourable senators, yesterday, when Bill C-41 was called to begin second reading debate, Senator Lynch-Staunton promptly rose on a point of order to challenge the procedural acceptability of the bill in its current form.

[English]

The basis of the senator's challenge, as he explained it, has to do with the bill's title, which he claimed was inadequate. Citing various Canadian and British parliamentary and legal authorities, the Leader of the Opposition maintained that the current long title of Bill C-41, "An Act to amend certain Acts," is defective because it is not sufficiently descriptive to cover all that the bill actually seeks to accomplish. As the senator stated, the language used in the long title of this bill does not give anyone any sense of what is being amended or corrected.

Equally problematic, according to the senator, is the fact that the bill proposes to amend a regulation, and that it also has attached to it a Royal Recommendation signifying the authorization of expenditures from the Consolidated Revenue Fund.

Given the situation, the only appropriate course, in Senator Lynch-Staunton's view, is to withdraw the bill and introduce a new one with a more accurate long title.

By way of reply, Senator Carstairs maintained that the title of Bill C-41 was indeed sufficient, and that its table of provisions makes it clear which acts the bill purports to amend. The Leader of the Government also referred to previous bills similar in nature to this one, which had titles that did not indicate all the



miscellaneous statutes they were amending. The senator concluded by stating that there is no authority for the assertion that the title must be relevant to each and every clause, and there is no authority to sustain the alleged point of order.

In a subsequent intervention, Senator Carstairs cited, as a relevant precedent, a bill considered in the previous session, Bill C-40, which, as the senator explained, amended or repealed 37 statutes, none of which was mentioned in the title of the bill, which was "An Act to correct certain anomalies, inconsistencies and errors and to deal with other matters of a non-controversial and uncomplicated nature in the statutes of Canada and to repeal certain provisions that have expired, lapsed or otherwise ceased to have effect."

Senator Cools also participated in the exchange on the point of order to generally support the position taken by Senator Lynch-Staunton.

[Translation]

I wish to thank the honourable senators who spoke to this point of order. I have taken the time to review Bill C-41 and to consider the arguments, precedents and authorities that were mentioned. I am now prepared to make my ruling. In doing so, I am particularly conscious of the need to avoid delving into any questions of law that are beyond the scope of my authority as Speaker. Nonetheless, I have had to look into elements of Bill C-41 in order to properly consider the arguments that were presented on the point of order.

[English]

Following what I understand to be established drafting conventions, Bill C-41 has two titles: a long title and a short title. The long title is "An Act to amend certain Acts," and the short title is the "Amendments and Corrections Act, 2003." Both are meant to be descriptive of the purpose of the bill. In recent years the length of the long and short titles has varied and, on occasion, we have seen bills in which the short title was actually longer and more descriptive than the long title. While it is admitted that a title is important with respect to determining the scope of a bill and the amendments that can be proposed with respect to it, this can be somewhat less important in the case of amending bills intended to correct a battery of statutes. This is because amending bills do not have the same integrity as a bill that constitutes an original act. Once enacted, the content of an amending bill is absorbed into the various acts to which it applies. The amending bill, as an act, has no independent existence. Its title, therefore, has a limited value.

• (1640)

According to the authorities cited by Senator Lynch-Staunton, the long title should set out, in general terms, the purpose of the bill and it should cover everything in the bill. The senator argues that with respect to Bill C-41, the long title fails to meet this requirement and is, therefore, procedurally defective. Whatever the merits of this claim, I am not certain that I have the authority as Speaker to rule the bill out of order on this basis.

I say this for several reasons. It is agreed that the general purpose of the bill is to amend certain acts. In this case, the question seems to be how specific the general terms must be. Given the uneven practice of long and short titles, particularly with respect to these omnibus amending bills, I do not feel that I can make that determination.

In addition, the remedy of withdrawing a bill belongs to the Senate rather than to me as Speaker. In this instance, however, we are dealing with a House of Commons bill, not a Senate bill. We cannot overlook the fact that this bill has already been debated and passed in the House of Commons. As Senator Lynch-Staunton has acknowledged, it is possible to amend the bill in its title if the Senate determines that this is appropriate.

Furthermore, as Senator Carstairs pointed out, Bill C-41 has a detailed table of provisions that constitutes a list of all the acts being affected by the bill. It may be that this table will be a feature for this kind of legislation to make up for any descriptive inadequacies of a bill's title. In any case, I do not think that this feature can be ignored.

Senator Lynch-Staunton raised two other issues in addition to the problem of the title in presenting his point of order. Though I do not believe they are determinative, I do feel it is appropriate to address them in this case.

The first issue is the matter of the Royal Recommendation that has been attached to the bill. In my review of the bill, I can point to at least one explanation for it. Clause 20 of the bill seeks to replace the position of the Executive Director of the Round Table on the Environment and the Economy with a president. Clauses 21 and 22 provide for remuneration and expenses of this replacement position, which requires a Royal Recommendation since the funds previously paid to the executive director and now allocated to the president are public monies.

Senator Lynch-Staunton also mentioned the fact that Bill C-41 amends some regulations. What clause 28 does is to change the effective dates of the enforcement of the regulations enforcement. The bill proposes to set the effective date for the regulations back from January 2003 to April 1998. There is another provision in the bill, clause 24.1, that does the same thing with respect to a regulation under the Parliament of Canada Act. The regulations per se are not being changed, only their coming into force date. This kind of change cannot be done by regulation; it must be done by statute.

For these reasons, it is my ruling that the point of order is not well founded and it is no impediment to moving the motion for second reading of Bill C-41.

#### POINT OF ORDER

**Hon. Terry Stratton:** Honourable senators, I rise on a point of order in respect of other issues relating to the form of Bill C-41 before this chamber. I would note at the outset, citing Beauchesne's 6th Edition, page 195, citation 636 that the Standing Orders in the other place do not even permit the introduction of a bill that is in either blank or imperfect shape. The specific reference is to Standing Order 68(3), which states:

No bill may be introduced in either blank or in an imperfect shape.

At citation 638, Beauchesne's goes on to state:

The Speaker has ordered the alteration of a bill to correct errors contained in the bill, but in doing so noted that the errors did not affect "the essence, the principles, the objects, the purposes or the conditions" of the bill.

That citation later states:

...Those who are responsible for such errors should take no comfort that future mistakes can be similarly cured.

In this instance, honourable senators, the bill cannot be cured by an order of the Speaker, if for no other reason than that the bill has come too far in the legislative process and such an order would necessarily constitute an amendment to the bill requiring the concurrence of the other place.

The short title of this bill is irredeemably flawed, meaning that the bill is in an imperfect shape and cannot be readily corrected. The solution is for the bill to be withdrawn or returned whence it came.

The short title of this bill is the "Amendments and Corrections Act, 2003," a short title that I would point out to the Senate is, in fact, longer than the long title of the bill, at least in number of characters if not in number of words. Quite apart from this flaw, an act that amends other acts should not have a short title at all. This is clearly stated in Beauchesne's at citation 627(2):

*Short Title* — The short title, under which the Act is cited amongst the statutes, is set out in the final clause: "This Act may be cited as the...." Acts to amend Acts do not have short titles.

Senator Lynch-Staunton, in his point of order yesterday, quoted former Deputy Minister of Justice Elmer Driedger, who also confirms that amending acts do not have short titles. At page 154 of his book entitled *Composition of Legislation, Legislative Forms and Precedents*, 2nd Edition, he writes:

Amending acts do not, as a rule, have short titles, the reason being that under the terms of the Interpretation Act they are to be construed as one with the Act amended thereby, and there is rarely an occasion for referring independently to the amending Act.

I would also like to speak to the question of the content of Bill C-41. Is there any unifying theme in this omnibus bill that would tie the bill together such that it is not inherently offensive to the legislative process? Yesterday, the Leader of the Government in the Senate listed each of the acts that the bill proposes to amend. She stated: "In fact, Bill C-41 is a technical corrections bill." What are these technical amendments and how, if at all, are they related?

First, we have a series of amendments to sections of the Canada Customs and Revenue Agency Act that change the title "commissaire adjoint" to "commissaire délégué."

Next, there is an amendment to the Customs Act to correct a missing reference to Costa Rica in the French text to. Could the unifying theme be miscellaneous corrections to errors and omissions in the French text of the bills? No.

The amendments to the Financial Administration Act make some technical alterations in both languages. The importance of the Intoxicating Liquors Act changes a reference to a section to a reference to a list, which simply makes the matter a little clearer.

There is a lengthy sequence of amendments to the Lieutenant Governors Superannuation Act, constituting one-half of Bill C-41, with amendments to the Salaries Act also in relation to former Lieutenant Governors. The list goes on and on. The only unifying theme, although I hesitate to label it as such, is that amendments are being made.

Honourable senators, if these amendments are of a minor or relatively inconsequential nature, they ought to be included in the existing process under the rubric of a miscellaneous statute amendment act. Otherwise they ought not to be jumbled together in this disjointed, unconnected and unrelated omnibus form.

As the Deputy Speaker of the House of Commons stated in his ruling on May 6, 1971:

It is of course a matter of judgment in each case as to when a bill offends to the point that it should be ruled as unacceptable because it contains disparate matters.

• (1650)

Honourable senators, we have a case before us in which there is no visible connection or relationship between the clauses of a bill and the statutes that it amends. If Bill C-41 does not offend to the point at which it ought to be ruled unacceptable, it is hard to imagine a bill that would do so. This bill cannot and ought not to be saved in its present guise. It is fundamentally flawed in both structure and form. It should be withdrawn or simply returned to the other place.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I am amazed to hear this point of order, which sounds to me more like an appeal of the Speaker's judgment than a new point of order, but so be it.

The first basis upon which the intervention was made was that it somehow or other offended the standing orders of the other place. Honourable senators, we are not bound by the standing orders of the other place. If it offended the standing orders of the other place, the other place was the place for the point of order to have been raised. They clearly did not raise such a point of order, and the bill passed all stages in the other place.

As to the arguments respecting the short title, I think the Speaker has already dealt with those.



Regarding the final point about a unifying theme, I would remind honourable senators that this is exactly what miscellaneous statute law amendments and technical corrections bills do. A technical corrections bill encompasses a variety of amendments to legislation, some controversial. Other amendments of a non-controversial nature are dealt with in a miscellaneous statute law amendment bill. The Senate deals with these on a fairly regular basis, and I think we should deal with this one with dispatch.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, this is not a miscellaneous statute law amendment bill. Is the Leader of the Government suggesting that this resembles a bill to amend miscellaneous statute law?

**Senator Carstairs:** No, honourable senators. Yesterday I clearly made the distinction between a miscellaneous statute law amendment bill, which is submitted in draft form, and a bill that encompasses amendments of a controversial nature. Those are removed by the committee studying the bill. The result is that those amendments of a controversial nature are lumped together in a technical corrections bill. That is done with the understanding that, when a technical corrections bill is presented in this chamber, it will be recognized that there may be some amendments of a controversial nature in the bill, and that it deserves the careful consideration of senators.

**Hon. Anne C. Cools:** Honourable senators, I have just a few minor points. My understanding is that omnibus bills are in order, and that their purpose may be to amend many statutes. However, there must be a common theme running through the amendments to tie them together in a bill. A long time ago during the debate on free trade I remember that Herb Gray, in the other place, made a definitive statement about the need for proposed amendments in omnibus bills to have a consistent theme that ties them together. In other words, the bill has to be intelligible to members of Parliament. As a member of the opposition at the time, I remember the strong position that our side, the Liberal side, took with respect to the Free Trade Agreement.

I should also point out that there are precedents in this chamber for the Speaker to withdraw bills. I have not researched this point, since it was sprung suddenly upon me, but I recall my private members bill on the Homolka-Bernardo situation and, at the behest of Senator Carstairs, a point of order was raised. His Honour the late Speaker Molgat, ordered that bill be withdrawn from the Order Paper and declared it out of order. I remember at the time thinking that it was a rather strident action. However, the precedent is in place. One must be mindful that the Speaker of this chamber has taken such actions before.

Some weeks ago, I argued in this chamber that every act does not make a precedent, and some single acts can be bad practice, and I was overruled on that. It seems to me that we are now in a state of affairs where, if something happens once, the fact that it has happened at all sets a precedent. Honourable senators, I argued that some weeks ago when I argued that the splitting of Bill C-10 was based not on true precedents but on a bad practice. At the time, I was overruled, so obviously there is a precedent. If

His Honour wanted to apprise himself of that, he may look up the record. I have records of it myself in my office, and would be happy to furnish those to him.

Coming back to the main substantial point, there is no doubt, honourable senators, that the sheer weight of legislation that is coming before us, the pace at which it is coming and the enormity of it is causing me considerable distress. Perhaps the government should admit that the time frame is too short, the load is too heavy and the program simply cannot fit into the time available. It simply is not possible to run a leadership convention and manage a heavy legislative program simultaneously. If the government were to ease off on its timetable, some pressure would be relieved and more care could be given to these bills. Bill after bill is being introduced here, many of which are questionable. Some months ago, we found many mistakes in Bill C-24, the party financing bill. Hence, care has to be taken in dealing with these bills.

**The Hon. the Speaker:** Senator Cools, I understand your views on this particular point of order, and I thank you. If no other senators wish to speak, I shall take the matter under consideration and bring a ruling back as soon as possible.

## CANADIAN FORCES SUPERANNUATION ACT

### BILL TO AMEND—SECOND READING— DEBATE ADJOURNED

**Hon. Jack Wiebe** moved the second reading of Bill C-37, to amend the Canadian Forces Superannuation Act and to make consequential amendments to other Acts.

He said: Honourable senators, another title for this particular piece of legislation could be the "Armed Forces Pension Modernization." The Canadian Forces Superannuation Act was introduced well over 40 years ago and has seen several changes and improvements over the years. However, there have been no major amendments to the pension legislation for Canada's military for more than 30 years, with the exception of some amendments that were brought in 1999 as part of the pension reform of the federal public service.

The 1960s were certainly different from today, and new issues have arisen, issues that oblige us to look closely at the military pension legislation and to start working towards its modernization.

• (1700)

One significant challenge that has arisen in recent years is recruitment and retention in the Canadian Forces. When the military's pension plan was first implemented, our society was quite different. At that time, it was assumed that the Canadian Forces could draw from a large number of potential recruits. The act was therefore designed with a view to supporting the force's profile and human resource realities of that time. In effect, it was a different Canadian force defending a different Canada.

Today, the job market has changed significantly and recruitment has become more difficult for the military. Families are getting smaller, the population is aging, and enrolment in post-secondary education is increasing, all of which means a smaller pool of potential recruits for the Canadian Forces. Competition for skilled workers is intense and the employment opportunity available to people with the right skills are better now than ever.

In response to this pressure, the Canadian Forces has taken, and is continuing to take, action to become an employer of choice. Pension modernization is part of this process. To compete in the current job market, the Canadian Forces must be able to offer a comprehensive benefits package, one that is on par with packages offered by other employers.

The Canadian Forces needs a pension plan that acts as a strong incentive to potential recruits. They need a modern system with a more flexible and responsive pension arrangement, arrangements that give military personnel more control and choice over their career paths and personal financial planning.

Honourable senators, modernizing the Canadian Forces pension arrangements is about more than recruitment and retention. It is about ensuring a high quality of life for the men and women of the Canadian Forces.

Great strides have been made in improving the quality of life of our military personnel. A modern flexible and effective pension plan is one of the many ways that we can ensure that the Canadian Forces members and their families will be well compensated for their dedication to Canada.

The amendments contained in this bill represent another positive step toward that goal. Honourable senators, our Armed Forces personnel deserve nothing less.

The bill before us will modernize military pensions through a series of amendments to the Canadian Forces Superannuation Act. For example, Bill C-37 provides greater flexibility for members in building their pension incomes by basing calculations on total pensionable service rather than on completing a term of engagement. The bill shortens the period of time required to qualify for a pension benefit, from ten years to two years. Bill C-37 improves both pension portability and pension benefits for survivors. A final but important point, and I find this very exciting personally, the bill provides pension coverage for reservists. Honourable senators, we all recognize the outstanding contributions that our reservists make to Canada and to the Canadian Forces. We have a duty to ensure that their service is appropriately recognized.

As a first step, the reserve force retirement gratuity was introduced in 1997. This provides a lump sum benefit to encourage and reward long service with the primary reserves. However, the Standing Senate Committee on National Security

and Defence along with the House of Commons Committee on National Defence and Veterans Affairs, and many others, have continued to call for the implementation of a real pension plan. Pension modernization sets the groundwork for doing precisely that.

The amendments set out in Bill C-37 will mean that long-term, full-time reservists and their regular force counterparts will have equivalent pension arrangements. This bill also lays the foundation to develop a pension plan for our part-time reservists.

The Minister of National Defence has said, concerning this bill, that pension modernization will not require a new funding from the Department of Defence programs. Any costs increases are related to the implementation of initiatives that were approved, as I mentioned earlier, by the 1999 pension legislation. The cost for these initiatives has already been earmarked in the fiscal framework.

The chief actuary of the Office of the Superintendent of Financial Institutions estimated that the other charges contained in Bill C-37 would not result in cost increases but might in fact result in modest savings.

To conclude, honourable senators, I should like to emphasize two key reasons why this proposed legislation is critical for our military and, by extension, for all Canadians. First, the proposed changes will help the Canadian Forces in the essential areas of recruitment and retention by making the Canadian Forces an employer of choice. Second, the bill will provide the basis for a pension plan that better meets the needs of both regular and reserve force members and their families, a plan that guarantees they will get the benefits they need and deserve.

For these reasons, honourable senators, I sincerely hope that you will support this piece of legislation.

On motion of Senator Atkins, debate adjourned.

[Translation]

## PARLIAMENT OF CANADA ACT

### NOTICE OF MOTION FOR TIME ALLOCATION

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, it is my duty to inform the Senate that it was not possible to come to an agreement on how many days or hours would be allocated to complete second reading debate on Bill C-34.



Honourable senators, I give notice that at the next sitting of the Senate I will move:

That, pursuant to rule 39, not more than a further six hours of debate be allocated for the consideration for second reading of Bill C-34, An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence;

That when debate comes to an end or when the time provided for the debate has expired, the Speaker shall interrupt, if required, any proceedings then before the Senate and put forthwith and successively every question necessary to dispose of the second reading of the said bill; and

That any recorded vote or votes on the said question be taken in accordance with rule 39(4).

#### BUSINESS OF THE SENATE

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, it was agreed earlier that all items after Government Business should stand, except Item No. 1 under Commons Public Bills, that is, Bill C-212.

#### USER FEES BILL

##### SECOND READING

On the order:

Resuming debate on the motion of the Honourable Senator Stollery, seconded by the Honourable Senator Cools, for the second reading of Bill C-212, An Act respecting user fees.—(*Honourable Senator Kinsella*).

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, having read the bill and in his absence, I am authorized by Senator Kinsella to inform the Senate that he does not object to the bill being referred to committee.

Motion agreed to and bill read second time, on division.

##### REFERRED TO COMMITTEE

**The Hon. the Speaker *pro tempore*:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Day, bill referred to the Standing Senate Committee on National Finance.

The Senate adjourned until Thursday, October 23, 2003, at 1:30 p.m.

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CANADA

# Debates of the Senate

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37th PARLIAMENT

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OFFICIAL REPORT  
(HANSARD)

Thursday, October 23, 2003

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THE HONOURABLE DAN HAYS  
SPEAKER



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(Daily index of proceedings appears at back of this issue).

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## THE SENATE

Thursday, October 23, 2003

The Senate met at 1:30 p.m., the Speaker in the Chair.

Prayers.

### SENATORS' STATEMENTS

#### FOREIGN AFFAIRS

##### CIVIL WAR IN SUDAN— EFFORTS TO BRING PEACE AND ASSISTANCE

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, hardly noticed last month was an announcement by the Government of Sudan, reported in the *New York Times* of September 26, that it would withdraw most of its troops from the rebel-held south of the country and begin integrating its soldiers with those of the rebels in a unified army.

The ongoing conflict in Sudan represents one of the most horrific and least well-known tragedies in recent memory. That country has been engaged in civil war since the day it became independent in 1956. After approximately a decade of relative peace, the war started up again in 1983 and grew increasingly devastating through the 1990s. Both directly and indirectly — through famine and disease — this war has resulted in over 2 million deaths, mainly civilian, and over 4 million people being internally displaced since 1983. In addition, more than half a million people have fled to other countries as refugees, and countless others have suffered in innumerable ways.

The accord between the government and the Sudan People's Liberation Army will take years to implement, but at least it is a major step forward. The talks leading to it, moderated by Kenya and facilitated by Norway, the United Kingdom and the United States, have begun to bear fruit. As one might expect, it has not been an easy road, nor is there any guarantee that a final agreement will be reached or, once reached, that it will hold. Still, there has been more progress towards a sustainable peace during this time than at any other time in the history of this tragedy.

Throughout the years of fighting — and this brings me to my reason for raising this subject — Canada has both supported a political settlement to the conflict and provided much needed emergency relief to affected civilians. Since 1999, Canada has had a special envoy working in support of the peace process. The first person to hold this position was our colleague Senator Lois Wilson.

After her retirement, Senator Mobina Jaffer was named as successor. I am pleased to draw colleagues' attention to her active participation in the peace process and to extend to her and to all those involved in that process best wishes for success in achieving an end to this most terrible of tragedies, which sadly, most of the world prefers to neglect.

#### SMALL BUSINESS WEEK

**Hon. Catherine S. Callbeck:** Honourable senators, this week Canadians from across the country are celebrating Small Business Week. This is an excellent opportunity to acknowledge the vital role small business plays in the Canadian economy.

The theme for this year's week is, "YOU'RE THE POWER behind the Canadian economy, let's share the energy!" This theme emphasizes the power of individual entrepreneurs in developing innovative ideas and businesses.

This week is also a time to acknowledge the importance of assisting entrepreneurs, providing them with the necessary tools to develop innovative ideas and to expand businesses. This is essential, because small business is the engine that drives our economy. In 2001, small and medium-sized businesses employed close to 6.4 million people, or 65 per cent of all employees in the private sector. Self-employment in Canada has grown faster than paid employment in the last 25 years. Today, one in six workers in Canada is self-employed.

This year, I had the opportunity to celebrate the week by participating in the 2003 Women in Business Symposium in Prince Edward Island. The symposium was definitely a fitting way to celebrate this year's theme, as women entrepreneurs are really a power in small business and in the economy. Today, there are more than 821,000 women entrepreneurs in Canada, contributing in excess of \$18 billion to our economy every year.

The Prime Minister's task force on women entrepreneurs has been undertaking a study of women in business. We will be releasing a report next Wednesday, October 29. It contains a number of recommendations to expand the contribution of businesses led by women and to help overcome some of the barriers women entrepreneurs face.

#### LITERACY ACTION DAY

**Hon. Ethel Cochrane:** Honourable senators, I rise in celebration of Literacy Action Day on Parliament Hill. I am sure all honourable senators agree that today's information society places far greater demands on our literacy skills than ever before. While government is only now coming to terms with these demands, many communities across this country are already engaged in literacy work. I, for one, am quite impressed by the work being done at the local level, often in total isolation to promote literacy.

• (1340)

Honourable senators, I should like to take the opportunity on this occasion to pay tribute to all those individuals, particularly Senator Joyce Fairbairn, who are active in literacy work, especially on the front lines. Their work has been critical to the



development of people and communities across this great land of ours. Indeed, I found many encouraging examples of this at lunch today in all the areas within Canada and, in particular, in my province. I am especially proud of the advances made in my own community. Stephenville has led Newfoundland and Labrador in literacy programming for many decades. Back in the 1960s, for instance, it became the first to implement the federal government's Basic Training for Skills Development Program. At any given time, you could find more than 1,000 students pursuing adult basic education at the Stephenville Adult Centre. I was fortunate enough to be involved in that work and can assure senators that the program provided many benefits to both the community and the province.

The town's literacy legacy continues to grow. Just last month, I attended the launch of the adult basic education level 1 program. It marked the long overdue return of full-time level 1 training in our area.

Honourable senators, in communities right across this country, similar literacy gains are being made. Sadly, however, the absence of a national literacy strategy, together with a limited pool of resources, have gravely impeded progress. Once again, I remind all senators of the urgent need for a pan-Canadian literacy strategy and encourage everyone to support literacy activities in their own communities.

**Hon. Consiglio Di Nino:** Honourable senators, I, too, want to acknowledge Senator Fairbairn's contribution today and speak on Literacy Action Day. She is downstairs at a reception for the Literacy Action Day activities and doing her good work there. That is twice this week I have actually thanked and acknowledged Senator Fairbairn. Something is going on here. I had better be careful.

Honourable senators, I am certain that every senator in this chamber would agree when I say that the ability to read, write and communicate has been a fundamental part of our lives and one that has directly led to our ability to be productive members of society. Today's Literacy Action Day on Parliament Hill remind us, however, that not all Canadian adults have the ability to use these skills with ease. In fact, over 20 per cent of our adults have low literacy skills, which prevents them from engaging in a number of everyday things that the majority of Canadians take for granted. The ability to read and write is so fundamental to our day-to-day activities that it is all too easy to overlook the importance of literacy. High literacy skills in adults are beneficial to almost every aspect of life. Everything from income levels to the ability to correctly use prescription medication is improved by increased literacy skills. One way — and perhaps the best way — to ensure that adults are able to take advantage of all those literacy skills can provide is to create a strong foundation for them in childhood.

[Translation]

Honourable senators, the advantages of exposing children to reading and communication at a very early age are well

documented. An activity as simple as telling a story stimulates the development of infants' brains.

[English]

Children who are read to on a regular basis do significantly better in school than those who do not have that advantage. Also, listening to a story read aloud helps children to improve their listening, vocabulary and language skills.

In a few months, on January 27, Canada will observe another day that promotes this subject matter, Family Literacy Day, which focuses on intergenerational learning in order to positively impact upon family members of all ages. When children see their parents and grandparents reading newspapers, writing letters or following recipes, they learn that these activities are valued and that the written word gains an importance they will carry through their entire lives.

I encourage all Canadians to engage in the development of their children's literacy skills not just for the advantage of their own family but for the benefit of our nation as a whole.

Honourable senators, I will share with you that during debate on my bill to eliminate the GST on reading material, I, too, learned a lot. It resulted in my creating an ever-expanding library for each one of my four grandchildren, which I hope will not only help them but will help to advance the cause of literacy.

**Hon. Joyce Fairbairn:** Honourable senators, I thank both of my colleagues for speaking on this cause of literacy. It is a pleasure for all of us in this chamber to welcome an army of more than 60 activists from every province and territory in this country today. Ten years of Literacy Action Day may not mean a lot for other issues, but 10 years for literacy is good. The event today seems to have been the best ever, and I thank everyone in this chamber for taking part.

The people who are with us today are fighting hard to bring to all of us and to our colleagues in the other place an understanding and sense of urgency for a vigorous and concentrated action to deal with an issue that is so large and so engrained in our society that it is blighting the lives of millions of Canadian adults, threatening opportunities for their children and pulling down the potential of Canada in an ever-changing world of competition and technology.

Honourable senators, the people who were here on the Hill today are bringing the message from the grassroots of this country. They are talking about the 40 per cent of adult citizens who have difficulty every day of their lives participating in our country due to a lack of literacy skills. If this issue is handled correctly, we will help strengthen our towns, our cities and our provinces. It goes to the very heart of the future of this country. It is not about special treatment and it is not about privilege. It is about access to learning as a right and a responsibility for every citizen in this country, regardless of where they live, how old they are or their circumstances.

At a time of transition in this Parliament and in politics, these people have come to Ottawa at the right time. The past two years have brought together more of a consensus in this country to seriously tackle this issue. They have put a challenge to us. They have said: Let us do it now.

Honourable senators, in the year and weeks ahead, we have an opportunity to answer that challenge. I think we will. We will do it with a lot of help from people on both sides of this chamber.

I am very proud of all honourable senators. I thank you for getting behind this initiative and lending a hand to these citizens who need our help so much.

## NATIONAL DEFENCE

### INITIATIVES UNDERMINING EFFICACY

**Hon. J. Michael Forrestall:** Honourable senators, despite the statements that we are reading in the press, Canada's army is on its way to some form of destruction — not from battle, but due to government incompetence, disinterest, direction or benign neglect. I have raised these issues time and time again. I think immediately of the mess that now surrounds the restructuring of the army reserve: The plan to remove pioneers from infantry platoons, so as to strengthen under-strength engineer units; the further direction to remove mortar platoons from infantry battalions to bulk up under-strength and obsolete artillery units. These measures alone have removed the infantry's sharpness and its ability to fight on the modern battlefield as self-contained units.

• (1350)

The plan is to move all but a company's worth of armoured fighting vehicles from every infantry battalion to a new experimental centre to save money on maintenance costs — and not, as is now being claimed, modernization of that army or of its equipment. This will have the impact of eliminating battalion, battle group and brigade level training for all but one unit at a time.

Now we find, as I have said before, that the Leopard main battle tank fleet is due to be scrapped in favour of the eight-wheeled 105 millimetre Stryker mobile gun — a decision that has been called morally wrong and unethical.

These measures will virtually eliminate this country's ability to continue to participate in Afghanistan, let alone ever join a shooting war much above the personal level.

It is wrong that a G8 nation that was the victor at Vimy Ridge, that led the Last Hundred Days and the clearing of the Gothic Line, or that liberated Holland, has sunk so low as to destroy with budget cuts what two world wars and Korea, not to mention 50-plus years of peacekeeping, could not break.

## ROUTINE PROCEEDINGS

### NATIONAL ANTHEM ACT

#### BILL TO AMEND—REPORT OF COMMITTEE

**Hon. Michael Kirby,** Chair of the Standing Senate Committee on Social Affairs, Science and Technology, presented the following report:

Thursday, October 23, 2003

The Standing Senate Committee on Social Affairs, Science and Technology has the honour to present its

#### THIRTEENTH REPORT

Your Committee, to which was referred Bill S-3, *An Act to amend the National Anthem Act to include all Canadians*, has, in obedience to the Order of Reference of Tuesday, June 10, 2003, examined the said bill and now reports the same without amendment.

Respectfully submitted,

MICHAEL KIRBY  
Chair

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Poy, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.

## NATIONAL SECURITY AND DEFENCE

### BUDGET—REPORT OF COMMITTEE ON STUDY OF VETERAN'S SERVICES AND BENEFITS, COMMEMORATIVE ACTIVITIES AND CHARTERS PRESENTED

**Hon. Joseph A. Day,** for Senator Kenny, Chair of the Standing Senate Committee on National Security and Defence, presented the following report:

Thursday, October 23, 2003

The Standing Senate Committee on National Security and Defence has the honour to present its

#### SIXTEENTH REPORT

Your Committee was authorized by the Senate on Thursday, September 18, 2003 to undertake a study on:

(a) the services and benefits provided to veterans of war and peacekeeping missions in recognition of their services to Canada, in particular examining:

- access to priority beds for veterans in community hospitals;
- availability of alternative housing and enhanced home care;



- standardization of services throughout Canada;
- monitoring and accreditation of long term care facilities;

(b) the commemorative activities undertaken by the Department of Veterans Affairs to keep alive for all Canadians the memory of the veterans achievements and sacrifices; and

(c) the need for an updated Veterans Charter to outline the right to preventative care, family support, treatment and re-establishment benefits.

That the Committee report no later than June 30, 2004.

On September 29, 2003 the Committee referred this matter to its Subcommittee on Veterans Affairs.

Pursuant to Section 2:07 of the Procedural Guidelines for the Financial Operation of Senate Committees, the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that Committee are appended to this report.

Respectfully submitted,

JOSEPH A. DAY  
*Member of the Committee*

(For text of budget, see today's Journals of the Senate, Appendix, p. 1213.)

**The Hon. the Speaker:** When shall this report be taken into consideration?

On motion of Senator Day, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

#### BILL RESPECTING THE EFFECTIVE DATE OF THE REPRESENTATION ORDER OF 2003

##### FIRST READING

**The Hon. the Speaker** informed the Senate that a message had been received from the House of Commons with Bill C-49, respecting the effective date of the representation order of 2003, to which they desire the concurrence of the Senate.

Bill read first time.

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the second time?

On motion of Senator Smith, bill placed on the Orders of the Day for second reading two days hence.

[Translation]

#### BILL TO CHANGE THE NAMES OF CERTAIN ELECTORAL DISTRICTS

##### FIRST READING

**The Hon. the Speaker** informed the Senate that a message had been received from the House of Commons with Bill C-53, to change the names of certain electoral districts.

Bill read first time.

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the second time?

On motion of Senator Rompkey, bill placed on the Orders of the Day for second reading two days hence.

#### ROYAL CANADIAN MOUNTED POLICE ACT

##### BILL TO AMEND—FIRST READING

**Hon. Pierre Claude Nolin:** Honourable senators, I have the honour to present Bill S-24, to amend the Royal Canadian Mounted Police Act (modernization of employment and labour relations).

Bill read first time.

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the second time?

On motion of Senator Nolin, bill placed on the Orders of the Day for second reading two days hence.

[English]

#### OFFICIAL LANGUAGES

##### BILINGUAL STATUS OF CITY OF OTTAWA— PRESENTATION OF PETITION

**Hon. Jean-Robert Gauthier:** Honourable senators, pursuant to rule 4(h), I have the honour to table petitions again today, signed by another 2,000 people, for a total of 12,000 people in the last two weeks, asking that Ottawa, the capital of Canada, be declared a bilingual city and therefore a reflection of the country's linguistic duality.

• (1400)

The petitioners pray and request that Parliament consider the following:

That the Canadian Constitution provides that English and French are the two official languages of our country and have equality of status and equal rights and privileges as to their use in all institutions of the government of Canada;

That section 16 of the *Constitution Act, 1867* designates the city of Ottawa as the seat of government of Canada;

[Translation]

That citizens have the right in the national capital to have access to the services provided by all institutions of the government of Canada in the official language of their choice, namely English or French.

That Ottawa, the capital of Canada, has a duty to reflect the linguistic duality at the heart of our collective identity and characteristic of the very nature of our country.

Therefore, your petitioners call upon Parliament to affirm in the Constitution of Canada that Ottawa, the capital of Canada, be declared officially bilingual, under section 16 of the Constitution Acts from 1867 to 1982.

[English]

## QUESTION PERIOD

### UNITED NATIONS

#### COMMISSION ON HUMAN RIGHTS—PROCESS FOR SPONSORING RESOLUTIONS AGAINST VIOLATIONS

**Hon. A. Raynell Andreychuk:** Honourable senators, I wish to ask some follow-up questions to ones I have already put to the Leader of the Government in the Senate. In preparation for meetings of the United Nations Commission on Human Rights, what role does cabinet play in determining what resolutions and actions we will be seeking to put forward in the Commission on Human Rights?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I do not know the process as to how we put together the ideas that we would put forward to the UN Commission on Human Rights. I can make that inquiry on behalf of the honourable senator and bring an answer back to the Senate as quickly as possible.

**Senator Andreychuk:** Honourable senators, from its inception, we have played a lead role in the United Nations Commission on Human Rights. We have always attempted to be fair in assessing other countries. We have used the country-specific mechanism to note our concerns with various countries. In that regard, we have always used our own country as a yardstick. It is not saying that we are better than or above certain aspects. However, noting that we have similar problems in our country, we would then look to making representations as to what we felt were the necessary improvements in situations, as well as noting our concerns with grave situations in other countries. There has always been a broad debate in the country to involve citizens so that the views of Canadians are reflected in that process of the government.

In recent years, while there has been an NGO forum held by the minister, there does not seem to have been any alert as to what the

government considers to be serious violations it believes the Commission on Human Rights should deal with. Consequently, we have lost a leadership role in that United Nations Commission.

We were often the first to bring together like-minded countries to discuss these concerns. We would often alert the country in question of our concerns, in an effort to elicit a positive response, and we would take that into account. In recent years, however, our actions have been more random, more of a follow-up of what other countries are doing in the United Nations Commission on Human Rights rather than assertive leadership from Canada.

It would be valuable for Canadians to know what types of human rights are of concern to their government, as well as how their government comes to assess what are serious violations of human rights. This knowledge would give some opportunity to influence the government before the UN Commission on Human Rights meets, which is usually in March and April.

**Senator Carstairs:** Honourable senators, to the best of my knowledge, there has been no change of direction or policy, nor the way in which we conduct our affairs with respect to the United Nations Commission on Human Rights.

The honourable senator asks a legitimate question when she says that Canadians should know just what that process is. I would be pleased to provide the honourable senator with that information.

**Senator Andreychuk:** Would Parliament also have a role to play in determining the priorities and the approaches that the Canadian government takes? In other words, beyond the ability of either the Foreign Affairs Committee here or the Foreign Affairs and International Trade Committee of the other place, is it time for the government to more formally put its position before Parliament, for a full discussion before final decisions are made at the Commission on Human Rights.

**Senator Carstairs:** That is an interesting suggestion, one that I shall bring forward.

**Hon. Marcel Prud'homme:** Honourable senators, we should encourage either the Senate Committee on Foreign Affairs or the Committee on Human Rights to look into that process. The Foreign Affairs Committee — which is currently studying the Canada-U.S. trade relationship, among other matters, and which used to be one of the most outstanding committees — should start looking into that question. If not the Foreign Affairs Committee, then the Human Rights Committee should look into the matter.

That is my suggestion, without being a specific question.

**Senator Carstairs:** As the honourable senator knows, because I have said many times in this chamber, I do not direct the affairs of the committees. It is up to the individual committees to decide what they will study, when they will study it and how they will study it with what funds they get, all of course approved by the Senate as a whole.

[ Senator Gauthier ]



## NATIONAL DEFENCE

SCRAPPING OF EQUIPMENT  
AS COST-SAVING MEASURES

**Hon. J. Michael Forrestall:** Honourable senators, my question is for the Leader of the Government in the Senate.

We know for a fact by way of the government's answers to Questions on the Order Paper that, when it comes to the Prime Minister's personal affairs, he can spend \$100 million in one day on Challenger jets. However, for the troops in the field, it is an entirely different matter. The best they get is a worn-out Jeep or an old half-ton truck with a shotgun on the back.

Can the Leader of the Government confirm for this chamber — and she has only to go back to last spring to see that I asked these questions at that time — that the Leopard C2 main battle tank fleet, the Tribal class destroyers, the long-range C-130s, as well as a whole series of other artillery pieces, are about to be scrapped, allegedly to save money?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, as the honourable senator knows, because I have told him before in response to a similar question, all equipment is under review. New equipment purchasing is also being investigated. Of course, I completely disassociate myself with his earlier comments that we do not provide Canadian servicemen abroad with the best equipment. We certainly do.

**Senator Forrestall:** Much like the uniforms we all like so much.

The last minister I dealt with who talked similar to the Leader of the Government and her colleague, the Minister of National Defence, was a fellow named Paul Theodore Hellyer. We all know how destructive he was to the Canadian Armed Forces.

Can the Leader of the Government confirm that the government will scrap the entire Leopard main battle tank fleet to save money?

**Senator Carstairs:** Honourable senators, when and if that decision is made, there will be an announcement to that effect.

**Senator Forrestall:** What did she say?

**Senator Lynch-Staunton:** She said that Paul Martin will tell you.

**Senator LeBreton:** She said nothing.

**Senator Forrestall:** Did you say Paul Martin will tell me?

**Senator Lynch-Staunton:** Just about.

• (1410)

**Senator Forrestall:** I wonder whether the minister —

**Senator Bryden:** You might wait until the Alliance takeover of your party is completed.

**Senator Lynch-Staunton:** More, more! Do you think Doug Young will join us? Does he still have his card?

**Senator Forrestall:** Honourable senators, I can tell you, if you really want to know, just how concerned this government is about our troops in the field by reading just one little example from the menu items on the Prime Minister's new Challenger jets: filet mignon — however you want it cooked — veal, caviar, scallops, an assortment of alcoholic beverages and wines, of course. We are speaking of a flying Taj Mahal.

However, for the troops in the field, it is ration packs of beans, wieners, the latter of — which are really a favourite because they double the sweetness of the beans for dessert. As I say, they are a very popular dish.

Can the Leader of the Government confirm that it is the intention of the government to scrap all four of our Tribal class destroyers, leaving us without a task group command and control capability, not to mention the concept of command and control with air defence?

**Senator Carstairs:** Let me begin by assuring the honourable senator during my time as a minister, I believe that I have been on two Challengers, the last one being, of course, to go to the funeral of the late Izzy Asper. I was not offered veal, filet mignon, caviar or scallops; I had chicken.

As to the honourable senator's particular question with respect to destroyers, he knows full well that no decision has been made in that regard whatsoever.

**Senator Forrestall:** I wish to pose just one more question so that we might get another denial.

My question has to do with the long-range C-130 aircraft. Can the minister indicate whether the long-range C-130s used in the Arctic are about to be scrapped? In addition, could she confirm, since some time has gone by now, whether there has been any response to what is in one sense not a bad idea, and that is the search around the world for spare C-130s or even spare parts? We will take anything.

**Senator Carstairs:** Again, the honourable senator is well aware that no decision has been taken with respect to the C-130.

While I am on my feet, I think Senator Forrestall might be interested to know that when the Prime Minister was in Afghanistan, he rode in a civilian pattern vehicle.

## RECRUITMENT OF PILOTS

**Hon. Norman K. Atkins:** Honourable senators, my question is to the Leader of the Government in the Senate. On September 17, the government leader told us that there has been an acute shortage of pilots, particularly fighter pilots, and that the federal government has been increasingly active in its recruitment of pilots. It has been reported that air force officials admit that the aging Sea Kings and Hercules transports, which have been grounded by maintenance woes, have chased away more than a few potential candidates. Does the Leader of the Government not agree that the basic problem is the lack of planes that can actually fly?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, that is not the situation at all. The honourable senator knows that we are, in particular, missing pilots who fly fighter aircraft. We have been most challenged to find replacements for those pilots.

#### PRIVATIZATION OF MAINTENANCE SERVICES

**Hon. Norman K. Atkins:** Honourable senators, the defence minister plans to contract out maintenance of the air force's Hercules aircraft instead of relying solely on military technicians. It is expected that by doing so the military will have use of 21 of its 32 Hercules at any given time, rather than the 14 at this point. Even that is questionable. At the same time, the navy has stated that to resolve the Aurora problem, it is considering hiring private companies to conduct air patrols along Canada's East and West Coasts.

How much of the air force does the government plan to privatize? What effect would that have on overseas missions where we take maintenance crews with us?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, it is interesting to note that in the announcement by the Minister of Defence yesterday with respect to reallocation of dollars within his department, he indicated that they were looking to cancel opting out initiatives and will be looking to doing things in-house.

**Senator Atkins:** Honourable senators, it has been suggested that a number of military maintenance technicians who have been servicing these aircraft are now retiring from the air force and being hired by private companies to then maintain the aircraft that are being put out for maintenance privatization.

**Senator Carstairs:** Honourable senators, that is just one more example of the excellent training that is provided within the Armed Forces.

#### FOREIGN AFFAIRS

##### MALAYSIA—PRIME MINISTER'S ANTI-SEMITIC COMMENTS—MEASURES OF PROTEST

**Hon. Jeremiah S. Grafstein:** Honourable senators, as the Leader of the Government is aware, the Prime Minister of Malaysia, Mr. Mahathir, has made outrageous statements of anti-Semitic rhetoric against Jews and outrageous discriminatory comments against others. We understand that the Prime Minister has chosen not to speak to him about that matter. We will obviously hear from him when he returns, and we have heard from the Leader of the Government in the Senate about the response of the Minister of Foreign Affairs saying that Mr. Mahathir's statement is unacceptable. Has the government given consideration, having in mind the knowledge and access of the government and all members of this chamber to the various fora of international human rights, to presenting a resolution at

the United Nations or other international fora? On their face these words appear to be contrary to the UN Charter, contrary to the UN Declaration of Human Rights, contrary to the Helsinki accord, contrary to the Copenhagen document of 1990, and contrary to the Lisbon document of 1996, all of which explicitly breach those international treaties and accords. Has the government given consideration to putting the minister's statement to the test by using our vast multilateral relationships in these various fora to bring resolutions forward and to use these instruments as effective means to drown out the said egregious words?

Honourable senators, I have a resolution dealing with anti-Semitism that has been on the Order Paper for 11 months. As I said when I introduced it and I say now, words can kill, silence is acquiescence, acquiescence is licence and licence leads to violence. Therefore, would the government consider these active measures?

**Hon. Sharon Carstairs (Leader of the Government):** That is an excellent list of measures that we could take. I know that the Minister of Foreign Affairs is waiting for a response from the Malaysian government to our official protest before we decide exactly what actions we will take. I will certainly make him aware of the positive suggestions that the honourable senator has put forward.

• (1420)

##### MALAYSIA—EXPRESSION OF DISAPPROVAL OF PRIME MINISTER'S ANTI-SEMITIC COMMENTS

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I wish to ask the Leader of the Government in the Senate the nature of our official protest in regard to the remarks of the Prime Minister of Malaysia?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, as I have indicated, over and over, immediately upon the words having been spoken by the Prime Minister of Malaysia, Minister Graham was in touch with his officials in Ottawa. He ordered them to call in the Malaysian High Commissioner. The Malaysian High Commissioner was informed of our dismay and asked to take that to their foreign government, which is the normal practice when dealing with another country. We are waiting for a response. Meanwhile, we are looking at all forms of responses that we might take, including the excellent suggestions that the Honourable Senator Grafstein has put forward.

**Senator Lynch-Staunton:** The Prime Minister of Australia, John Howard, has publicly commented on those comments as being indefensible and wrong. The President of France wrote a letter to the Prime Minister of Malaysia saying that these remarks can only be condemned. President Bush took the Prime Minister of Malaysia aside and told him face to face that these were comments he could not approve of. Why must we hide behind the faceless bureaucracy? Why do we not come out directly and say to the Prime Minister of Malaysia that we find his comments absolutely unacceptable?



It is incredible that, according to *The Toronto Star* of October 21, Prime Minister Chrétien could have availed himself of scripted "media lines on anti-Semitic remarks made by the Malaysian Prime Minister" prepared by the Department of Foreign Affairs. A response was ready for him. The first suggested press line is that the Canadian government finds the comments made by Prime Minister Mahathir offensive, inflammatory and unbecoming of his position. I believe we all agree with that. Why did the Prime Minister not say so himself publicly?

**Senator Carstairs:** As the honourable senator knows, because I have told him on a number of occasions, the Prime Minister allowed the Minister of Foreign Affairs to speak very clearly on this subject, and the Prime Minister indicated that his Minister of Foreign Affairs was representing the Government of Canada.

**Senator Lynch-Staunton:** It is interesting that the Prime Minister is willing to set up an armed camp and have students tear-gassed during the APEC conference in Vancouver to protect his friend Suharto. It is interesting that he will not say anything about these racist comments by his friend the Malaysian Prime Minister. It is also interesting that he was able to sit down in Beirut next to a well-known terrorist and shake his hand and say nothing. What is this? Is this a friend of terrorists, racists and dictators? It is incredible.

**Senator Carstairs:** I wish to disassociate myself, as do I hope the majority of all honourable senators in this chamber, from those comments.

**Hon. Marcel Prud'homme:** Honourable senators, I wish to join with the Leader of the Government in her last comment. I rarely disassociate myself from my good friend the Honourable Senator Lynch-Staunton. However, I believe the time has come for senators to study the full issue. Senator Grafstein has made a suggestion; I would like to help him out.

I suggest we go through the speech of Prime Minister Mahathir paragraph by paragraph. There are 59 paragraphs. There is a paragraph that the Honourable Senator Grafstein, the Honourable Senator Lynch-Staunton and I find totally unacceptable. However, there are other paragraphs. I am not a propagandist; I simply want people to be well-informed. Senator Grafstein tried to explain this for us. There are paragraphs which honourable senators will applaud. For example, the Prime Minister denounced those who encourage young people to blow themselves up; that is one of the 59 paragraphs. When he denounced backwardness of the Arab and Muslim communities, that was not popular, I can assure you. However, there are words that are unacceptable to Canadians and to the rest of the world.

The Honourable Senator Grafstein, with his intelligence, has made a request and suggested exactly what should be referred to the United Nations.

Mr. Mahathir spoke at the opening of the World Muslim Community, and we must be careful, the Muslim community does not mean Arabic. There were 1.3 billion people represented in the

56 countries that were present. They all stood up, including great friends of Canada, such as the King of Morocco and the King of Jordan, and so forth. What should be referred to the United Nations? I would like to work with Senator Grafstein on that.

**Senator Carstairs:** I have not read all of Prime Minister Mahathir's speech, but the quotes that I have read are totally unacceptable. They are quite clearly within what we define in this country as hate propaganda. They are unacceptable.

**Hon. Jack Austin:** Honourable senators, all of us realize that if some other ethnic group were referred to by Prime Minister Mahathir, whether it be the Québécois, the Chinese or some other group, but particularly a minority group, we would be dealing with the same level of sensitivity.

There is no question that, as Senator Carstairs has said, those remarks amount to what we call hate propaganda. They identify Jews as a group that is acting contrary to the interests of the international community. There is no such group. We all know that.

The problem that Senator Prud'homme is dealing with is moving closer to a clash of civilizations. Mr. Mahathir is encouraging that concept. That concept is not in the interests of the world community.

I give enormous credit to former Prime Minister Mulroney, when dealing with the hated apartheid policies of the South African regime, he made sure the international community expressed its opprobrium of that particular behaviour and the Commonwealth acted to remove South Africa as a member on the initiative of Canada.

I would ask the Leader of the Government whether the government would please consider whether these actions require similar conduct by the Commonwealth at the instigation of Canada or an official apology by Malaysia to the Commonwealth and to the world community?

**Senator Carstairs:** Honourable senators, that is an excellent suggestion and I would be pleased to bring it forward.

It is important to put some other words on the record. I mentioned yesterday the press conference by telephone that our Minister of Foreign Affairs had. I have a transcript of that. It is important that we hear what he had to say when referring to Prime Minister Mahathir's comments. He said:

...the conspiracy theory that the Jewish people are seeking to use countries to attack Muslims and I don't think, this is not a credible theory and it is not acceptable, it's not credible and we know in Canada that our Jewish citizens participate in a lively political debate on, from all perspectives and all spectrums of society. I have been participating in interface dialogues with Jews and Muslims brought together and they might disagree on some issues but we all agree on basic needs to respect one and another.

## FINANCE

[Translation]

## BUDGET SURPLUS—ELIMINATION OF GOODS AND SERVICES TAX ON READING MATERIALS

**Hon. Consiglio Di Nino:** Honourable senators, I was very happy when I saw on television the beaming face of Minister Manley announcing a \$7 billion surplus that bodes well for our country.

My question to the Leader of the Government is in regard to how this money will be distributed. As today is Literacy Action Day on Parliament Hill, I should like to remind colleagues that during extensive hearings on a bill that I introduced to eliminate GST on reading material, we were often told that we could not afford that kind of measure that was estimated to involve between \$120 million to \$250 million.

My question to the minister is: Since we have some extra money, is there any consideration at this time, or could an announcement even be made today, Literacy Action Day, that the Government of Canada is finally considering eliminating GST on reading materials?

• (1430)

**Hon. Sharon Carstairs (Leader of the Government):** The honourable senator knows full well that when the budget surplus is announced, there is no choice to do anything with it but to pay down the debt, since we are out of the budget year for which that surplus has been acquired.

**Senator Di Nino:** Obviously there are times when that is not the case. Try not to make this a political issue, because it is not. Senator Fairbairn said that some 40 per cent of Canadians actually lack proper literacy skills. The resolution of this emergency would benefit this country economically, socially, culturally — in every way possible. Over many months of hearings, we heard extensive evidence from many Canadians who supported the elimination of the GST on reading material. Would the minister please take a message back to the Prime Minister that, before he leaves office, perhaps this is one promise he can keep, to eliminate the GST on reading material?

**Senator Carstairs:** The honourable senator knows that fiscal year 2002-03 ended March 31, 2003, some many months ago. It is not possible in Canada's fiscal system to do anything with that \$7-billion surplus for the year 2002-03 other than to pay down the debt.

**Senator Di Nino:** I am sorry, but that response is an attempt to hide the fact that we have a windfall. I ask that the Leader of the Government take this message to the Prime Minister so that he can consider making a recommendation. I ask him to at least keep this one promise of the many he has not kept. I think I speak even for Senator LaPierre, who I believe applauded my comment.

**Senator Carstairs:** Honourable senators, let me reiterate. I can bring the idea forward for a future expenditure, but I cannot and will not bring something forward that is physically impossible for a government to do.

**Senator Di Nino:** That is what I am asking.

## THE SENATE

## INTRODUCTION OF NEW PAGES

**The Hon. the Speaker:** Honourable senators, we have a few new pages and I would like to introduce them to you.

First I would like to welcome Adél Gönczi, who was born in Romania and grew up in New Brunswick. She currently attends the University of Ottawa where she studies political science. She is in her third year and her favourite courses involve international issues.

[English]

Lindsay Mossman is from Winnipeg, Manitoba, and is attending Carleton University in the Faculty of Public Affairs and Policy Management, with a major in political science. She is currently in her second year of her honours program.

Andrea McCaffrey is originally from the province of Quebec, more specifically from the very small town of Brownsburg. She is currently studying at Carleton University, with a major in political science and a concentration in Canadian politics.

## VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I draw to your attention the presence in our gallery of our former colleague, the Honourable Nick Taylor.

**Hon. Senators:** Hear, hear!

**The Hon. the Speaker:** I would also like to draw to your attention the presence in our gallery of a delegation of staff members of the national assemblies of the countries of the Gulf Cooperation Council. They are sponsored by the International Republican Institute.

Welcome.

**Hon. Senators:** Hear, hear!

[Translation]

## ORDERS OF THE DAY

## BUSINESS OF THE SENATE

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, in Government Business, under Bills, I propose we begin with Item No. 4, which is Bill C-41, and continue with Item No. 5, which is Bill C-37, and then Item No. 6. Then we could continue with Item No. 1 under Motions and return to Bills, with Item No. 3. Finally, we could conclude with Items Nos. 2 and 1 under Bills.



**Hon. Jean-Robert Gauthier:** Honourable senators, we are given an Order Paper every day and every day without fail we change the order of items. One really needs a phenomenal memory to keep track of all that. Could the order in which we are going to deal with the bills be printed? We prepare for a bill that gets put off, and we do not know when we will be able to discuss it. That would help us to plan our work better.

**Senator Robichaud:** Honourable senators, I do understand what Senator Gauthier is saying, but on today's Order Paper there is one item, Item No. 2, for which there will be a deferred division at 3:30 p.m., with the bells starting to ring at 3 p.m. Thus, it would be somewhat difficult to follow the proposed order when the Senate has adopted the order to hold a vote at a specific time.

[English]

**Hon. Terry Stratton:** I have a question for Senator Robichaud. I understood from this morning's meeting that we would be dealing with Bill C-10B as well before three o'clock.

**Senator Robichaud:** No, the last item.

**Senator Stratton:** I understood we were to follow the Order Paper, starting with Item No. 1, and then move on to the others. Is there any reason for not proceeding in that fashion?

**Senator Robichaud:** The only reason is that I will stand Item No. 1, Bill C-10B, so it does not matter if it is first or last.

**Senator Stratton:** My question is whether we will deal with it before going to the motion or after going to the motion.

**Senator Robichaud:** No, after.

**Senator Stratton:** Then my question becomes why? My understanding was we would deal with Item No. 1 first, prior to going to the motion.

**Senator Robichaud:** It did not appear to me that it would make any difference because no one has indicated an intention to speak. Senator Watt indicated a while ago that he wanted to speak. In consultation with him, he is not ready to do so and would prefer that it be put back. That is why I will stand Item No. 1.

**Senator Stratton:** Thank you.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, Bill C-10B has been before us and has gone back and forth at least twice between the Senate and the House of Commons. The Leader of the Government put down a motion at least three weeks ago to in effect accept the House's recommendation, and then the bill stalls. How do we reconcile that fact with a bill that only came here two weeks ago and on which time allocation was imposed? It seems to me that the issue of cruelty to animals is just as important as creating the position of ethics counsellor for the Parliament of Canada. Why does Bill C-10B not move along?

• (1440)

I know Senator Watt has objections, as do other senators. Let us put the question and find out whether we support those objections or not. This bill has been with us now for some time.

I do not have this in front of me, but I can look it up. It has been at least a year since Bill C-10 came to the Senate, if not more, and has been allowed to languish. However, a bill that is fairly fresh, the one I call the ethics bill, is suddenly, even before second reading is given, subjected to time allocation.

How can the deputy leader explain the approach to these two bills, one of which has been here for so long a time and the other of which has just arrived?

[Translation]

**Senator Robichaud:** Honourable senators, I must point out that, with Bill C-10B, we have a message and a motion from the Leader of the Government.

Honourable senators, the items under Government Business were not adjourned in the name of any particular senator. Any senator who wishes may speak when that item is called.

Until now, each time I wanted to stay the motion on Bill C-10B, I consulted Senator Watt and he agreed. If other senators had wanted to speak, they could have done so since the item is still on the Order Paper, except that Bill C-10B will be called last instead of first. I have no objections if anyone wishes to speak on this matter.

[English]

**Senator Lynch-Staunton:** That is not my question. My question is, why not extend the same time courtesy to those who may want to elaborate on Bill C-34, instead of putting down a notice of time allocation after hearing only two speakers? There may be other senators who are not ready to speak this week but who would like to speak next week. They are being ignored, whereas in the case of Bill C-10B one senator has said, "I am not ready." The government is very understanding and says, "That is perfectly all right with us. When you are ready, let us know and we will carry on the debate." Why two different sets of rules for the same purpose?

**Hon. Charlie Watt:** Honourable senators, I think I should clarify something here. It is not a question of not being ready. I am ready. I have prepared my comments, but I was asked this morning whether I could postpone making them to another day. I agreed with our deputy leader this morning, and I did not think there was anything wrong in doing so.

On top of that, I also said that since it takes time for me to travel up to the Arctic and come back to Ottawa, I really did not feel like coming back down here on Sunday. That would mean that I would only be up North for one day and then have to fly right back again. It costs a lot of money to come back. I will not be here on Monday either. My speech can be postponed to Tuesday, which would do me a great favour.

**Senator Lynch-Staunton:** The plot thickens then. The government asked Senator Watt to please postpone any discussion on the bill. That is fine. I find it extraordinarily courteous. I have no problem with that, but why do those of us who have concerns with Bill C-34 not benefit from the same courtesy?

This is an important issue. Is this what they are telling us: "Deux poids, deux mesures"? "We do not want Bill C-10B, so please follow our instructions and bring it up next week when we will make sure that it does not get anywhere. However, Bill C-34 is somehow very pressing, so forget the debate and let us move along." It is a steamroller in one case and an extraordinary, to-be-welcomed courtesy in the other. That is not fair.

[Translation]

**Senator Robichaud:** I object to being told that this is not fair.

Although Senator Lynch-Staunton says that the message with Bill C-10B is not wanted, I would say that the opposite is true.

We want the message. The motion before the Senate asks that we not insist on our amendments. However, Senator Watt is the only senator who has indicated he would like to speak. No one else has.

I am always open to requests and have been in this case. If someone wants to speak today or Monday, I will not object. If more attention is paid to some bills than others, if we should not debate a time allocation motion, that will be part of the debate later on.

**Senator Lynch-Staunton:** Senator Watt has told us himself that he was prepared to speak, and that it was at the government's request that he postponed his comments.

He is prepared to speak, he said so himself. He is prepared to speak now.

[English]

He could probably speak right now, but he is waiting until next week at the request of the government. This is the message sponsored by the Leader of the Government, asking us to accept the House's refusal of our amendments. So it is like government legislation. On the other hand, we are told that we cannot debate Bill C-34. This is not right. Please explain why Senator Watt was asked not to speak today.

[Translation]

**Senator Robichaud:** Honourable senators, earlier I listed the items we would like to call first; Item No. 1, the message about Bill C-10B, will be called much later in the day. If I could be given the assurance that all honourable senators will still be here at 8:30 p.m., I would have no problem. At some point however, I know that some senators will want to leave because of their various travel schedules. That is fine, I often do.

I think that, as the Deputy Leader of the Government, I can call under Government Business items in whatever order we decide to call them, as we often do. I am sorry to have to take time to explain these kinds of things. I suggest we move to Government Business and start debating the bills currently before us.

[English]

**Senator Lynch-Staunton:** The Deputy Leader of the Government has not answered the key question. Senator Watt is ready to speak. He told us that. However, the deputy leader told us earlier that he would stand the bill. Then we found out his is standing the bill because he requested Senator Watt not to speak today. I want to know why that was done.

[Translation]

**Senator Robichaud:** Those are words. I asked Senator Watt if he could postpone his speech, and he agreed to do so. He just told us he will not be here on Monday and asked to speak on Tuesday instead. I am complying with his request. But in the meantime, if another honourable senator wishes to speak, we can hear him or her as soon as that item is reached. I have no problem with that.

[English]

## AMENDMENTS AND CORRECTIONS BILL, 2003

### SECOND READING—SPEAKER'S RULING

On the Order:

Second reading of Bill C-41, to amend certain Acts.—(*Speaker's Ruling*).

**The Hon. the Speaker:** Honourable senators, following my ruling on a point of order regarding Bill C-41, Senator Stratton raised another point of order respecting two other alleged problems with this bill. The first has to do with its short title; the second relates to its omnibus character.

• (1450)

Quoting a specific standing order of the other place, as well as some Canadian parliamentary and legal authorities, Senator Stratton claimed that the short title of Bill C-41 is irredeemably flawed. Furthermore, according to two authorities, the chief opposition whip maintained that Bill C-41, as an amending bill, should not have a short title at all. As to the content of the bill, the senator argued that it has no unifying theme. This fact makes the bill inherently offensive to the legislative process. In conclusion, Senator Stratton contended that Bill C-41 is fundamentally defective in both structure and form and should be withdrawn or simply returned to the other place.

[Translation]

Speaking in response to this point of order, Senator Carstairs began by stating how the rules and practices of the other place are not the proper concern of the Senate. The Government Leader



then proceeded to explain that miscellaneous statute law amendment bills and technical corrections bills can encompass a wide range of statutes. The only difference between the two, as the senator noted, is that the MSLA bills do not contain any controversial amendments whereas technical corrections bills can. Both, however, are omnibus in character, with the potential to address many different and disparate Acts.

[English]

Senator Cools also participated in the discussion on this point of order. The senator raised several issues in her intervention. First, Senator Cools expressed her understanding of the nature of these omnibus amendment bills, suggesting that they did not indeed have to possess a common theme. Second, the senator noted that there has been at least one case in the Senate of the Speaker ruling a bill out of order and in this connection Senator Cools cited her own experience with Bill S-11, the Homolka bill that was the object of a Speaker's ruling in 1995. The senator also made some interesting comments on the nature of precedents and practice.

[Translation]

I wish to thank honourable senators for their contributions to the discussion on this point of order. I am prepared to rule on it now.

[English]

As I noted in my earlier ruling on Bill C-41, this bill has come to the Senate from the House of Commons. It did not originate in the Senate. Whatever process of consideration might have been followed in the other place with respect to Bill C-41 is not a matter that can properly be raised in the Senate. As to the matter of this amending bill having a short title, this feature, even if it may be unusual, cannot, in my view, be regarded as fatal. The presence of a short title to this bill does not and cannot constitute a valid ground for me as Speaker to rule it out of order.

I acknowledge that Bill C-41 is an omnibus bill that seeks to amend or correct a number of statutes. I am unaware of any requirement that such a bill must possess a common theme, and no authority has been cited to substantiate such a claim. To the contrary, I am aware of numerous miscellaneous statute law amendment bills and some technical corrections bills in the past that have addressed many different acts within the same bill. This is nothing new and Bill C-41 is no different in this respect.

Accordingly, I rule that there is no valid point of order in this case and that second reading of Bill C-41 can now continue.

#### POINT OF ORDER

**Hon. Norman K. Atkins:** Honourable senators, I wish to rise on a point of order regarding the content of Bill C-41, which anticipates what this chamber may or may not do with another piece of legislation before us. Honourable senators, let us be clear: Bill C-41 is not a bill that is simple and straightforward. It is not a bill that can be said, on its face, to be completely non-controversial. It is complicated. There are amendments in this bill relating to the coming into force of parts of Bill C-25, the Public Service Modernization Act, which I note is still at third reading in this chamber. Both the government house leader in the other place and the bill itself referred to these amendments as coordinating amendments.

The government, in introducing Bill C-41, appears to have been operating on the basis of a presumption that the Senate of Canada will not make amendments to Bill C-25, other than what Bill C-41 anticipates. Indeed, a government official, on September 29, 2003, said: "We pick up all the changes that we need at the end of the day if you read the two acts together."

Section 30 of Bill C-41 deals with the coming into force of Bill C-25 and the coming into force of Bill C-41. Section 30 ensures that the French version of "Deputy Commissioner" referred to in the Canada Customs and Revenue Agency will be replaced by "commissaire délégué." This contains within it an underlying assumption that the Senate will continue to use the words "commissaire délégué" and not some other term. If Bill C-41 passes with Bill C-25, the term "commissaire délégué" will be used instead of "commissaire adjoint."

An amendment of this nature could and should properly have been brought into Bill C-25 by the government, either in the House of Commons or here in the Senate. Bill C-25 was debated at report stage in the House of Commons on May 27. It was debated at third reading on May 28, June 2 and June 3. Bill C-41 was introduced in the House of Commons on June 4, 2003, just one day after the passage of Bill C-25. It was referred to committee on September 26, considered clause — by clause on October 1 and reported to the House on October 2. It passed the House of Commons on October 3, on a motion of the government house leader. This motion said:

That, notwithstanding any Standing Order or usual practice, all questions necessary to dispose of amendments at the report stage, concurrence at report stage and third reading and passage of Bill C-41, the technical corrections bill, be now deemed to have been put and carried.

It was given what can best be described as a cursory examination in the other place during these stages. Bill C-41 makes amendments to change the title of the executive director of the national round table on the environment and the economy to president. These amendments are fairly clear on pages 12 and 13 of the bill. It should be noted that, in this part of the bill, the language used to describe the bureaucracy of Canada is "the Public Service of Canada," which is the current legal term. If unamended by the Senate, Bill C-25 will change the terminology of "the Public Service of Canada" to "the Federal Public Administration." However, on pages 17 and 18, Bill C-41 provides for the coming into force of Bill C-25 and Bill C-41. If Bill C-25 is passed without any amendments dealing with the terminology, Bill C-41 enables an amendment to the national round table on the environment and the economy act to replace the words "Public Service of Canada" with "the Federal Public Administration" while ensuring the new title of president is not lost in the interaction between the coming-into-force provisions.

Honourable senators, this sounds complicated. In effect, the government has brought in amendments to change titles in the Canada Customs and Revenue Agency Act and the National Round Table on the Environment and the Economy Act on the presumption that, whichever bill is passed first, further amendments to the terminology "federal public administration" or "commissaire délégué" will not be made by this chamber.

With Bill C-41, the government has acted prematurely in anticipation of the expectation that the Senate would neither amend Bill C-25 to replace the words "federal public administration" nor replace "commissaire délégué" with something else.

It is my view that Bill C-41 should not be allowed to proceed — certainly not before the chamber has completed its examination of Bill C-25. The government has assumed that the Senate will pass Bill C-25. It is assumed that the Senate will not make changes to Bill C-25 in terms of terminology used in the bill.

The government chose not to bring forward amendments to Bill C-25 to correct the French language issue. It could have done so easily; indeed, this chamber might well make any necessary amendments during the course of its consideration of Bill C-25.

### BUSINESS OF THE SENATE

**The Hon. the Speaker:** I am sorry to interrupt Senator Atkins, but I am obliged to do so, under order of the house, so that the bells may ring for the vote, which we have agreed to take at 3:30 p.m.

Call in the senators.

• (1530)

### PUBLIC SERVICE MODERNIZATION BILL

#### THIRD READING—MOTION IN AMENDMENT NEGATIVED

On the Order:

Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Harb, for the third reading of Bill C-25, to modernize employment and labour relations in the public service and to amend the Financial Administration Act and the Canadian Centre for Management Development Act and to make consequential amendments to other Acts.

On the motion in amendment of the Honourable Senator Beaudoin, seconded by the Honourable Senator Comeau, that the Bill be not now read a third time but that it be amended in clause 12, on page 126, by replacing lines 8 to 12 with the following:

**"30.** (1) Appointments by the Commission to or from within the public service shall be free from political influence and shall be made on the basis of merit by competition or by such other process of personnel selection designed to establish the relative merit of candidates as the Commission considers is in the best interests of the public service.

(1.1) Despite subsection (1), an appointment may be made on the basis of individual merit in the circumstances prescribed by the regulations of the Commission.

(2) An appointment is made on the basis of individual".

Motion negated on the following division:

### YEAS THE HONOURABLE SENATORS

Andreychuk  
Atkins  
Beaudoin  
Cochrane  
Di Nino  
Doody  
Eyton  
Forrestall

Gustafson  
LeBreton  
Lynch-Staunton  
Nolin  
Prud'homme  
Robertson  
Stratton  
Tkachuk—16

### NAYS THE HONOURABLE SENATORS

Adams  
Austin  
Bacon  
Banks  
Biron  
Bryden  
Callbeck  
Carstairs  
Chalifoux  
Christensen  
Cook  
Corbin  
Cordy  
Day  
De Bané  
Downe  
Fairbairn  
Ferretti Barth  
Finnerty  
Fraser  
Gauthier  
Gill  
Grafstein  
Hervieux-Payette  
Hubley  
Joyal

LaPierre  
Lavigne  
Léger  
Maheu  
Mahovlich  
Massicotte  
Merchant  
Milne  
Moore  
Pearson  
Pépin  
Phalen  
Pitfield  
Plamondon  
Poulin  
Poy  
Ringuette  
Robichaud  
Rompkey  
Smith  
Sparrow  
Stollery  
Trenholme Counsell  
Watt  
Wiebe—51

### ABSTENSIONS THE HONOURABLE SENATORS

Nil



## AMENDMENTS AND CORRECTIONS BILL, 2003

## SECOND READING—POINT OF ORDER

On the Order:

Second reading of Bill C-41, to amend certain Acts.

**Hon. Norman K. Atkins:** Honourable senators, citation 512(2) of Beauchesne's 6th Edition, dealing with the rule of anticipation, states:

The rule against anticipation is that a matter must not be anticipated if it is contained in a more effective form of proceeding than the proceeding by which it is sought to be anticipated, but it may be anticipated if it is contained in an equally or less effective form.

In this instance, there is a more effective mechanism than the proposal contained in Bill C-41. That mechanism is simply to amend Bill C-25 itself. This would have the clear advantage of maintaining all of the relevant material within the same bill.

Your Honour, it is my submission that Bill C-41 is out of order because it infringes upon the rule of anticipation.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, it will come as no surprise that I do not agree with the other side's point of order. We have now had three points of order on this bill. Two of them have been declared not in order and I think we should add this one as well.

Bill C-41 includes two coordinating amendments with respect to Bill C-25. There is no question about it; they are in the bill. As honourable senators know, the purpose of coordinating amendments is to resolve possible conflicts between successive amendments to the same provision and to avoid having one bill undo the work of another. In this way, coordinating amendments respect the rights of Parliament, as they ensure that the statutes of Canada fully respect the laws passed by Parliament.

The coordinating amendments in Bill C-41 do not imply that there are mistakes in Bill C-25. The coordinating amendments do not amend Bill C-25; rather, they amend provisions of acts that are affected by both Bill C-25 and Bill C-41. If Bill C-25 becomes law and Bill C-41 does not, the coordinating amendments would not be needed at all. Similarly, if Bill C-41 becomes law and Bill C-25 does not, the coordinating amendments would not be necessary. However, if both Bill C-25 and Bill C-41 become law, the coordinating amendments are needed to ensure that the provisions of both bills are reflected in the statutes affected by Bills C-41 and C-25. Therefore, honourable senators, I would argue that what we have done here is entirely in order.

**The Hon. the Speaker:** Honourable senators, I will take the matter under consideration and report back as soon as possible with a ruling.

• (1540)

[Translation]

## PARLIAMENT OF CANADA ACT

## MOTION FOR TIME ALLOCATION ADOPTED

**Hon. Fernand Robichaud (Deputy Leader of the Government),** pursuant to notice of October 22, moved:

That, pursuant to rule 39, not more than a further six hours of debate be allocated for the consideration for second reading of Bill C-34, An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence;

That when debate comes to an end or when the time provided for the debate has expired, the Speaker shall interrupt, if required, any proceedings then before the Senate and put forthwith and successively every question necessary to dispose of the second reading of the said bill; and

That any recorded vote or votes on the said question be taken in accordance with rule 39(4).

He said: Honourable senators, if adopted by the Senate, this motion would have the effect of allocating six hours of debate at second reading stage of Bill C-34. After second reading, as is our custom, the bill would normally be sent to committee. The committee will be instructed to study the bill and report back to the Senate. I point this out to ensure that the honourable senators understand clearly that this is not the end of the debate, but simply six hours of debate at second reading.

On October 23, 2002, a draft bill and a draft code of ethics were tabled in the Senate. That was exactly one year ago today. These proposals were presented for the consideration of the honourable senators.

On October 24, the Government Leader in the Senate, Senator Carstairs, moved to refer these two documents to the Standing Committee on Rules, Procedures and the Rights of Parliament. At that time, it was simply a motion to refer the documents to the committee for study. It was not a motion to adopt the documents now before us.

Three and one-half months, or 21 sitting days, later, the motion to refer the two documents in question was passed. I recall that honourable senators were invited on a number of occasions to express their views on these documents so that there would be a written record of their opinions and suggestions, and the changes they would like to see made.

The committee met for the first time on February 11. It met another 23 times, hearing 24 witnesses, including the Senate Law Clerk and parliamentary counsel. In all there were 41 hours of deliberations.

On April 10, 2003, the Standing Senate Committee on Rules, Procedures and the Rights of Parliament tabled its interim report with the Clerk of the Senate, and then continued its deliberations. Its most recent meeting was on September 24, 2003.

Debate on the report began on April 30, 2003. There were 39 sitting days when this matter could have been debated. On numerous occasions, in caucus and elsewhere, I encouraged the honourable senators to express their views on the committee's report.

On April 30, 2003, the government introduced Bill C-34 in the other place. This bill incorporated some of the amendments suggested by the committee of this house which had studied the documents.

Honourable senators, consideration of the Senate report was deferred for 33 sitting days, counting today. There was opportunity to express our views at the study stage of this report, which is still on the Order Paper. I repeat, honourable senators were invited on numerous occasions to express their views.

Bill C-34 was passed in the other place on October 1. The Senate received it on that same day, October 1. The Leader of the Government, Senator Carstairs, moved second reading on October 7, 2003. Today is the seventh sitting day on which people had an opportunity to speak.

After the speech by the Honourable Leader of the Government in the Senate, normally the second speech is reserved for the person responsible for speaking on behalf of the Opposition. That honourable senator happened not to be prepared to speak, but on several occasions I invited the honourable senators to speak, without affecting the position of the honourable Opposition senator, who would have 45 minutes at his disposal, being the second speaker.

There could have been agreement to maintain the allotted time of 45 minutes. That way, the honourable senators could have spoken on Bill C-34. One can hardly say that there was no opportunity to speak on this bill.

Bill C-34 before us could have been debated, either at second reading or during consideration of the committee's report, for some time.

Honourable senators, I want to say again that the effect of this motion is to allot six hours of debate on Bill C-34 at second reading stage only.

If this motion is adopted, the debate will continue, the bill will be referred to committee, which will consider it, make its report, and send it back to the Senate for third reading. I am certain that, when debate resumes, the bill will be hotly debated by all senators.

[ Senator Robichaud ]

[English]

**Hon. Terry Stratton:** Honourable senators, would the Honourable Senator Robichaud take a question?

**Senator Robichaud:** I certainly will, honourable senators.

**Senator Stratton:** The honourable senator referred to the document from the Standing Committee on Rules, Procedures and the Rights of Parliament as a "report."

Can the honourable senator tell the house from where his reference comes? My understanding is that it was not a report. In fact, at that stage, it was not called a report but a commentary. We members of the Rules Committee deliberately did not call it a report, for a particular reason. This was at a time when we were studying the merits of the bill. It was at an interim stage and the study was incomplete. Time after time in the committee we said that our study was incomplete.

• (1550)

The implication that the honourable senator gave was that it is a report upon which we had completed our work. On the other hand, it was stated quite clearly, again and again, that the report, or so-called report, was actually a commentary, implying that we had much work left to do.

From that, at that time, how could the honourable senator expect senators to be prepared to speak when we had not completed our work or the full depth of exploration had not been carried out?

[Translation]

**Senator Robichaud:** Honourable senators, whether it is an interim report or a final report, the honourable senators have had the opportunity to express their views. I have here the Order Paper and Notice Paper and, on page No. 5, under the heading "Reports of Committees," Item No. 2 is entitled "Resuming debate on the consideration of the Eighth Report (Interim) of the Standing Committee on Rules, Procedures and the Rights of Parliament..."

[English]

**The Hon. the Speaker:** As honourable senators know, we are operating under a special rule. Speakers have 10 minutes, except for the leaders, who have 30, and your 10 minutes have expired, Senator Robichaud.

[Translation]

**Senator Robichaud:** Honourable senators, instead of asking for leave to extend this question period, I would rather hear the comments of the honourable senators.



I could definitely conclude my answer to the Honourable Senator Stratton by saying that the report is before us, and there have been a number of opportunities for the honourable senators to speak to it. But it is wrong to say that we did not get a chance to speak and that all of a sudden the debate is being curtailed. It is true however that debate is being limited to a maximum of six hours at second reading stage only.

[English]

**Hon. John Lynch-Staunton:** The Deputy Leader of the Government would have made a very fine lawyer with a very weak case. However, it is still a very weak case. To suggest that because we have had reports on the subject matter before us we should hasten study of a bill flowing from those reports is stretching the argument that time allocation is justified. We might as well say that since we received the Milliken-Oliver report years ago on the same subject, we should move even faster, because we have been discussing the question of ethics for all that time. That is not an argument that should be even entertained.

What I fail to understand is, again, what is so pressing that this bill must be subjected to time allocation at this stage? We have been faulted because our official spokesman, Senator Oliver, did not speak until October 21. First reading of this bill was given on October 2, a Thursday, second reading was on October 7 and October 8, and then there was a lull until October 21, when Senator Oliver spoke.

Honourable senators, we all know two things: First, Senator Oliver was on official business; second, Senator Oliver knows as much about this subject as anyone in this room, having co-chaired the Milliken-Oliver committee and having made strong recommendations, which were the subject years later of a committee study contributing to this bill. It was obvious to all that he should be our main spokesman but, unfortunately, official business kept him away. Senator Oliver did not know the Senate would be meeting on the Monday, and hence was not prepared to speak on that day, but on the Tuesday he was ready and spoke eloquently and forcefully on the bill. I told Senator Oliver — and I want to put it on the public record — that his knowledge on the subject was evident in the exchange of views with senators subsequent to his speech.

Honourable senators, I am putting this on the record to reject any suggestion that we have deliberately blocked the progress of this bill. I do not want anyone to suggest that the opposition here in the Senate has obstructed the bill. We are not obstructing the bill. However, but we should like to know why the government side has a self-imposed deadline, and one that regardless of what we on this side say, must be met?

We are still operating under the assumption — some might say an over-optimistic assumption — that we are here until a few days before Christmas and that the proposed legislation before us can be dealt with quite easily by then, one way or the other. We have absolutely no intention of delaying any legislation that the government wants for a vote before Christmas. Suddenly, however, this bill has become an item that must be dealt with within a very short period.

Honourable senators, contrast that with the government's attitude on Bill C-17, which is the second phase of the government's anti-terrorism strategy. The first phase of that strategy was Bill C-36. Bill C-17 came before us for second reading this past Monday, October 21, at which time the Leader of the Government spoke to it. Senator Cools asked a question of the government leader, related to the fact that the bill requires careful study because it is complicated and amends many acts, and the government leader replied, at page 2171 of the *Debates of the Senate* of October 21 as follows:

The honourable senator has certainly identified a huge challenge. This is, indeed, a very large bill.

In that regard, I remind honourable senators of a process we now have but which we did not have just a few years ago. It is one that allows the House of Commons to resurrect a bill. If we were unable to finish with this bill prior to the prorogation that some people seem to think will take place, then it could be resurrected in the other place and sent back to us for us to complete our work on it.

Honourable senators, we have done that before; why not do it again? Why should the end of a session be cause for a bill to start back at square one in the next session, rather than be continued from where it left off in the previous session?

To me, Bill C-17 is much more important for Canadians than Bill C-34. Bill C-17 contains proposed measures requested by our neighbours, the United States. They want those measures in place as soon as possible, which we support, regarding certain information on manifests. Bill C-17 also contains measures that, if legislated, will increase our ability to face a terrorist threat better than we can now. It is a bill that affects all Canadians, all visitors; its effects will be felt beyond our borders. Bill C-17 is the bill that should be given the highest of priorities. Instead, we are told that it is a large and complex bill, and that, if necessary, we will continue debating it later on, or early next year, whatever.

On the other hand, honourable senators, the bill before us only affects a handful of people. It is not a high-priority matter, and its implementation will take a year, if not two years, before it is done. First you have to find the officer and commissioner. You have to set up the office. You have to develop codes of conduct. This is not a priority bill as far as Canadians are concerned. Yet, the government relegates one bill that affects us all to a secondary position and this particular bill, which is not, I would think, one that Canadians are desperate to see, as other bills are, is given this kind of priority. The government's approach here displays a contradiction that is blatant.

• (1600)

I would like to remind honourable senators what time allocation is all about. By my definition, time allocation forces limited debate on proposed legislation without which a minority's strategy of delaying strictly for obstruction purposes can be pursued indefinitely.

The opposition is not engaging in the kind of obstruction that would justify time allocation. What is happening is that the government is imposing time allocation on its own members. It is unheard of. The government has among its members some who are justly — and as Senator Joyal has brought out and as I am sure others will — concerned about certain aspects of this bill, and rightly so. They now understand that their own leadership will limit their participation in the debate. I can tell you right now, if we have time allocation at this stage, sure enough, there will be some form of time allocation imposed in committee and there will be time allocation when the bill comes out of committee and there will be time allocation in order to meet what deadline? Is it November 7? Is that the deadline? Tell us. If you do not tell us, allow us to continue to believe that we are here until mid-December. That is the calendar on which we are working. That is the calendar that your colleagues should be working on.

We have this extraordinary tool of the majority being used against the majority. There is no one in the opposition who wants to speak to this bill at this stage except for Senator Beaudoin, who is ready to go today. Other than him, are there others opposite who wish to speak at this stage? I do not know. We are told, "But you are allowed six hours to find out." Once there is time allocation, the game is over. The government has indicated that this bill will be rammed through no matter what the arguments are, that amendments will not be entertained, that arguments will not be listened to. The six hours available will simply allow senators to put on the record things that will have no effect on those who introduced the bill.

We are also told, "Well, there was this gap of 10 days when no one spoke." How did the House of Commons handle this bill, this bill that is being given such a high priority? It was given first reading in the House of Commons on April 30, 2003, and it came out on October 1. It took the members of the House five months. This high priority, so essential, a key bill that still took five months to get through the House, and they expect us to do it all in two weeks. Is this what is expected from the chamber of sober second thought?

I have spoken on this before. I will try not to repeat myself except that I find it extraordinary, again, that all of us are working under the handicap of not knowing exactly what the government's intentions are regarding the future of this session and even the future of this Parliament. This is a major fault of our parliamentary process and argues again for fixed terms so that no prime minister or leader of the government, can, for self-serving and party advantage, decide that Parliament should be called and prorogued at will and that an election should be called when it is favourable. Those days should be over with.

Soon after Premier Campbell's party took over the Province of British Columbia, they passed a bill to do exactly that, to fix set dates for elections. Mr. Grimes announced in Newfoundland that he intended to do the same. That is good; it allows every parliamentarian to know exactly the time within which he and she are given to accomplish whatever they intend to accomplish and also at what time they must answer for their acts to the public.

All that the law provides here is that the government is elected for up to five years. Any time within those five years, an election can be called. If an election is called next spring, that means we will have had three elections in nine years, I think. Why? Who needs an election now? I will get back to this when Bill C-49 comes before us. There is another bill that is only intended to accommodate the next leader of the Liberal Party. It has nothing to do with the need for additional ridings in Ontario, British Columbia and Alberta, nothing at all. Those seats are confirmed anyway. The proclamation of those seats was done last August. They come into effect August 26 this year, but the government feels they should put them in earlier so that when they go for an election they can tell their friends in Ontario and out West, "See we got you your new seats."

They want to amend the Electoral Boundaries Act to suit partisan purposes. It has nothing to do with the need to have more equity in our electoral process, but I will get back to that when we come to Bill C-49.

For what it is worth, I urge that we do not adopt Senator Robichaud's motion, that we continue this debate, that we take the time needed to study it in committee on the understanding that any objection to this bill or any other bill will not hinder the resolution to any legislation by the time we adjourn for the Christmas holidays.

**Hon. Consiglio Di Nino:** Will the Honourable Senator Lynch-Staunton take a question?

**The Hon. the Speaker:** Do you agree to accept a question, Senator Lynch-Staunton?

**Senator Lynch-Staunton:** Certainly.

**Senator Di Nino:** Over the past number of years, we have had political parties, the media and some of our colleagues question why we are here. One defence we have always given, and I think it is a good one, is that we are here to review legislation and issues of importance to Canadians in a calm, rational, non-partisan manner to ensure that the decisions that we reach and the legislation that is passed in the Parliament of Canada is truly for the benefit of Canada and Canadians. I have often said, particularly when speaking at schools, that one of the important elements of the Senate is that we can deal with issues without the pressure and influence of the electors.

We do not have to be elected. We have been appointed. What that does for us is that I do not have to worry about my next door neighbour saying to me, "The next time, I'm not going to vote for you unless you are more in line with my thinking than you have been."

• (1610)

I tell the children when I speak at schools that we have a body of talented and wise people — and I really believe that — that goes about its business in the Senate of Canada in a manner which is not influenced by others but with that very important responsibility of looking after the interests of Canadians.



Too often, particularly in the past 10 or so years, this place has been dictated to by the other place. Yes, it happened before. It is not just this particular government. The previous government was not quite as bad, but it did the same thing. Those of us who have been around for a few years now — and I have talked to some of you on a one-to-one basis — feel embarrassed by this. We should be looking at, dealing with and debating the issues without the influence of the other place. As my leader has said, if we are only a revolving door for government legislation, then let us shut this place down. Truly, these kinds of actions embarrass me and should embarrass us all. We should not be denied the time to debate. We should not be denied the ability to fully, in good time, analyze the issues.

I have not often spoken on this issue, but frankly, I cannot defend it. I cannot defend this to my colleagues, to my friends, to the people I address from time to time, particularly, as I said, when I go to schools. I talked to a young lady this morning who was doing a Ph.D. thesis on the Senate, the government, and particularly the role of women in Parliament. Frankly, I said to her that I am not proud of some of the things we do in the chamber when we have to kowtow or bow to the wishes of the Prime Minister's Office or the cabinet. I made sure she understood that I was referring to both the previous government when my party was in power and this government. I think it does harm to our institution and is not the way we should be behaving.

I do not believe that the government side should put up with unnecessary delays, but this is silly. We have hardly had this piece of legislation. When I came here, I recall that the Unemployment Insurance bill was held up for nine months. I could understand it in that situation, and I think there would be some justification. This is about doing our job, and frankly, I think we should all feel embarrassed.

**Hon. Jeremiah S. Grafstein:** I have a question for Senator Lynch-Staunton, if he would allow. I tried to look at the precedents upon which the rule that we have been asked by the government to examine today was based. I noticed that the honourable senator referred to the rationale for the rule, and it is, to my mind, a fair explication of the rationale for the rule. The heart of it is obstruction.

On the other hand, the rule is applied here in a very unique circumstance, second reading, on a subject matter affecting the privileges of Parliament. I have been in this place for close to two decades. I could find nothing. I tried to go back beyond that time to find out if closure at second reading was applied to questions affecting the constitution of the chamber and the privileges of parliamentarians on this side and the other side. Some senators on the other side have had longer service in Parliament than I, but I have been an observer of Parliament since 1961. I recall as a youngster reading about the debates in 1957 and the question of the independence of Parliament separate and distinct from the

executive. The executive could not impose itself on the House or on the Senate, with which we are all familiar. Frankly, that fact is reflected in the committee report. I have not been able to discover one single precedent where closure, or as my colleague Senator Joyal says, guillotine, has been adopted on a matter affecting privileges of this chamber or Parliament. Perhaps Senator Lynch-Staunton's research is more coherent than mine, but that is the best I have been able to do.

**Senator Lynch-Staunton:** The research that we have been able to do has not shown any time allocation at this stage of a bill's progress, and certainly none on an item which would affect parliamentary privilege, the chamber itself and Parliament as a whole.

I sat in Senator Robichaud's chair for quite a while I introduced a time allocation motion on more than one occasion, but the situation then was different. Our numbers were not as one-sided as they are now, and there was deliberate obstruction by our Liberal friends. Some senators opposite were there at the time. That was part of a strategy. I did not object to that strategy, but there came a time when the obstruction became so blatant that we imposed time allocation.

I looked up two incidents, and there are others which I think are just as reliable, where the explanation given was a little more solid than the one given by Senator Robichaud, who said, in effect, "We have had two speakers; no one has spoken in six days, so here comes the guillotine." In the cases in which I was involved, and some senators will remember, debate had gone on for weeks. In one case, the bill contained deadline that had to be met, a deadline which was known. It was a provision to do with family allowances, and the notices had to go out by a certain date. The opposition side knew this, and the date had been known for months, but the opposition was deliberately delaying the bill so the government could not meet the deadline and would be embarrassed. There was justification to impose time allocation. The opposition side, at least unofficially, agreed that "Yes, we are trying to embarrass you." That is fine. On the other hand, the government has a tool to use in extreme cases. This is not an extreme case; far from it. It is a unique case where the guillotine is put down even before the debate has gone further than one or two speakers.

To come back to Senator Grafstein's question, no, I have not found any example where an action has been taken in this chamber similar to the one today.

**Senator Grafstein:** I have the so-called report that Senator Stratton referred to as not being a report, and it says, as Senator Robichaud says, that it is an interim report. When one examines the interim report, it is clear that it is not a conventional report in any sense of the word as it applies to legislation. It deals with principles.

We have heard that the committee met 23 times. I know Senator Lynch-Staunton was there on a number of occasions. I am a member of the committee, and I was there on the bulk of those occasions. My colleague Senator Joyal was there for practically all of those meetings. Again, drawing on my honourable friend's experience, what is this report? It is, as I see it, a document of exchanging viewpoints, but not one that opines on specific matters related to a specific piece of legislation at the time. Essentially, it is a general document of principles.

Has the honourable senator ever seen such a report as our colleague Senator Robichaud is using as a rationale for moving quickly or guillotining our ability to examine the subject matter of this particular bill on second reading? I ask Senator Lynch-Staunton to give us his experience in that regard.

**Senator Lynch-Staunton:** My experience is not as long as that of Senator Grafstein.

This is a precedent also. In addition, that particular report is still before us. It is still on our Orders of the Day. We have yet to dispose of it. No decision has been taken on it. Yet the government says, "You have not taken a decision on the report that you have before you, but you have had it long enough that we will move ahead anyway, no matter what you may think about the report." It just does not add up.

• (1620)

**Senator Grafstein:** I have a final question on this — I will call it an interim document just to be safe.

Again, Senator Robichaud said we have to incorporate amendments from that interim document. Can the honourable senator give me some insight as to what would be meant by that? I did not follow that argument and I obviously did not have an opportunity to respond to Senator Robichaud's comments.

What is meant by "incorporating amendments?" He said, "Many amendments were incorporated from the interim report." I am confused. Perhaps the honourable senator can alleviate my confusion?

**Senator Lynch-Staunton:** No, I am as confused as the honourable senator. I hope we can give leave for Senator Robichaud to answer directly. I, too, would like to know what amendments from the so-called interim report can be found in Bill C-34. Perhaps we could give leave and he can tell us.

[Translation]

**Hon. Gérard-A. Beaudoin:** Honourable senators, it is true that Bill C-34 has been before us for some time. However, I am somewhat surprised to see the privileges of the Senate, a matter as important and delicate in connection with the operation of the Canadian Charter of Rights and Freedoms, made subject to a time limit.

[ Senator Grafstein ]

We seldom have the chance to have such a fine debate on constitutional law. Why impose time allocation at second reading? Does the Charter of Rights and Freedoms apply to the privileges of the Senate? We are the Senate! These are our privileges!

The Canadian Charter of Rights and Freedoms belongs to all Canadians. Can the Canadian Charter of Rights and Freedoms limit my privileges? Note that there are few Supreme Court decisions on this matter.

Senator Oliver made quite a remarkable speech. He covered the four or five main decisions. He concluded that we should take all the time we need to examine the issue. This is very important.

I was appointed to the Senate 15 years ago. I have seen hours and hours spent on debates that were not nearly as important as what we are discussing today. Yet, we talked for hours. When we have a very important, fundamental question of law, we have to take as much time as necessary to consider it. We are at a stage provided for under our rules and we are being told that time will be limited. I am really surprised. This is the first time I have seen this. That is why I have agreed to speak about it.

I understand both sides of the argument, but I think this is going too far. People from both sides want to speak. Those who really have something to say should say it. However, the speeches do not always go much below the surface. Given the importance of the subject, we must devote a few hours to it. This affects us; these are our rights being discussed.

I read Senator Oliver's speech, which I found extremely important and interesting. It is our reason for being here in the Senate. We have to take as much time as necessary.

There are almost no legal decisions, almost no legal experts who have addressed our parliamentary privileges. We must express our views on the following principle: Yes or no, does the Canadian Charter of Rights and Freedoms limit or apply to our parliamentary privileges? This is a vital question! I do not see why the time allotted to this stage would be limited. We have many debates in our committees; that is good. We have debates in this Chamber; that too is good. The current subject sparks great interest among our colleagues from both sides. Now is not the time to limit a fine discussion for the sake of moving things along.

As I said, it is not every day that a subject sparks such interest. I have read the Supreme Court rulings and it is true that the Canadian Charter of Rights and Freedoms applies. It is true that if we have a statutory system for the ethics commissioner, the Canadian Charter of Rights and Freedoms applies. This is something we need to discuss. I think that the time allotted to the debate should not be limited.



[English]

**Senator Grafstein:** I have a question for Senator Beaudoin. The rationale for this closure motion, this guillotine measure, at second reading, is based on time taken for what was essentially a pre-study. That is an abnormal procedure in the Senate — a pre-study.

Senator Beaudoin has been here much longer than I have. Again I want to draw on his knowledge to tell me whether, in the circumstances, it was inappropriate — as some of us felt — to embark upon a pre-study of moving targets. The targets included a paper done by Milliken-Oliver, and then a draft bill, and then changes to a draft bill, and now a final bill that took five months for the other place to address. We were supposedly “studying” it during this period. There were 23 meetings held, according to Senator Robichaud; I have no reason to dispute that number.

I ask the honourable senator whether this is normal process. Have we followed the proper processes of this chamber of second sober thought by doing a pre-study on this moving target matter that goes to the privileges of the Senate? Has this procedure been normal? I ask, the Honourable Senator Beaudoin that because he has been here for a decade longer than I.

• (1630)

**Senator Beaudoin:** Honourable senators, I studied the procedure of the House of Commons many years ago, when I was an assistant parliamentary counsel, but I do not pretend to be an expert in the field of the technicalities and the question of privilege and procedure.

My argumentation is not based on the question of procedure. My intention is to say that, when a subject is fundamental in its nature — and the application of the Charter of Rights is, and will always be, of that nature — and when it deals with parliamentary privileges of a legislative house, we should discuss. Is there anything more important for a legislative house than its privilege and its powers? I do not know if we will win the vote or not. However, the subject is so important and so difficult that we should take the time to think about it and to discuss it here.

I have worked more in the Legal Committee than in this chamber, but there is no reason why we should not work in this chamber as much, if not more. If there is such an interest in Bill C-34, there must be a reason. The reason is that it is fundamental. It is law in the making. Five or six decisions of the Supreme Court will not settle this. It will take years and years, but we will reach a solution on this.

I regret not to be able to answer the honourable senator's procedural question. I am not an expert and I have tried all my life not to speak about matters that are not in my domain.

**Hon. A. Raynell Andreychuk:** Honourable senators, I am pleased that Senator Grafstein raised the point that we are invoking closure before third reading, which would be the normal

stage to put forward closure if there was a necessity. We in this place put a great emphasis on the individuality of individual senators.

Each one of us has come here with certain skills, and we look at our jobs from different perspectives. Perhaps we share certain values, but we also have differences. A code of conduct and principles have to bring some consensus to the attitude and behaviour here. This is not just an isolated bill. It is not the first time we have looked at the code of conduct and ethics. We have had rules in this Senate from the time it was created. This subject has been an ongoing debate.

Why do I raise this point? It is for two reasons. First, the government signalled in its Red Book that it would create a code of conduct, that it would attack the issue of ethics. In 1993, I eagerly awaited that initiative by the Prime Minister as one of his first promises. Nothing came in any concrete way. We have sat for nine years waiting for a code of conduct. Where is the urgency? Where is the obstruction from the opposition? We have asked, time and time again, about these promises. I remember senators on this side asking when the Red Book promises would be fulfilled. There has been no obstruction on our side. It was quite the opposite. We have eagerly awaited this legislation, and I think many have given up on it.

We on this side form the minority. We have difficulty manning our committees and doing our constituency work. Some of us have difficulty travelling here. You can appreciate that, while I, in my private time, think about my behaviour and conduct, I do not take it to be part of my legislative duties here until the government's business signals it to be so. I can only encourage. Perhaps we from this side should have brought a code of conduct, but we had the Milliken-Oliver report that was to be the guideline. We lived by that. We did not have specific pieces of legislation. The Milliken-Oliver report, as someone said, was deep-sixed. We did not even look at it in great detail because there did not seem to be an appetite for it on the part of the government.

Early this spring, the talk of the code of conduct and behaviour came to the fore again and the Rules Committee, quite rightly, started to study the matter. While I feel that pre-study is a good option in many cases, I do not believe it is a good option on ethics and behaviour because it is difficult to determine where to start with jurisprudence and ethical behaviour. There are classes in university to identify the words of “ethics” as opposed to “behaviour,” “practices” and “conventions.”

As vice-chair, I was not enamoured with dealing with ethics in a rather general way because I could not see how it could crystallize into anything meaningful. However, the Liberal majority insisted that we go into pre-study. We agreed. We did not stop the process or disagree with it. We started, quite rightly and with great patience from Senator Milne, to study the concepts. We heard from witnesses. The committee was only in the process of identifying some of the issues when we were told that legislation was coming and if we wanted to have input we better get on with a report, so an interim report came through.

Those who sit on the Rules Committee will remember that I said that we on this side could not commit to that interim report because it was unfair to something so fundamental as our ethics and behaviour to simply respond to possible legislation. Bring the legislation forward. Again, we were overruled. We noted our objections but we did not stop the report from going ahead. We noted on record our difficulty with this so-called interim report and that it was limiting options for a real debate. Those are the words I used in the committee and those are the words I say now: limiting options for a real debate. Why do I say that? Because what I predicted and what I argued against is happening now. We have had little snippets of debate and now we are being told, "That is enough." We have never had a comprehensive debate. Why should we have that? Because it is peer evaluation, in the end, that will drive a code of conduct. We better know what it will mean to all of us, and the debate should not be in the Rules Committee; it should be on the floor of this chamber.

I appreciate why no one rose to speak to it, because we keep hearing these rumours about November 7 and that we have pieces of legislation we have to get through before November 7. Everyone is preoccupied with their committees. We have not been able to hold a real debate, or a real exchange to arrive at a real compromise. There was no consensus in the Rules Committee. There was broad consensus on principles, but that is not good enough. We have to see the legislation to focus the attention of this chamber as to what it will mean in long-term consequences to each and every one of us.

I think it is a disservice to this house and certainly to this opposition to cut off debate when we are being told that we have to rush through other pieces of legislation. If we had been approached and told honestly that November 7 was to be the cut-off date, then on this side we would have allocated the kind of time to this issue that it deserves. However, we are constantly told there is nothing to the November 7 rumours, that we are here until the end of December and will then return in February.

• (1640)

Why the rush? Why cut off debate? Perhaps the answer lies in the legislation itself, to which I intended to speak, but I wanted to hear from other senators, not those on the Rules Committee. I want to hear what this chamber really intends to do regarding ethics. I would like to hear more detail from the government on this legislation. Where is the code of conduct in the legislation? It is a framework piece of legislation, but it will trap us into ways of dealing with our code and our behaviour that I think are not correct.

Further, where has there been public debate? We talk about the public demanding this code of conduct. Have we put the legislation together with the code? It was promised at the start that we would see the legislation and the code and we could marry the two to be sure that this was the correct direction to go.

Honourable senators, we end up with a piece of legislation that is only one piece of the puzzle. We still have more work to do. We

will end up with machinery that may or may not fit what we believe are the correct rules by which we should be bound.

Therefore, I ask Senator Carstairs and Senator Robichaud, why this urgency? Why not create a real debate among all senators? This bill is fundamental to how we function.

I recall the debate on attendance. To me, attendance relates to code of conduct and behaviour as much as anything else — whether we are obliged to be in the chamber, whether we can exempt ourselves and for what reasons. It is just a very small part of the puzzle.

Of course, one committee can deal with the matter, but we will wake up one day and say, "But this is affecting me." The integrity of the Senate's work will also be affected if we do not involve the public.

By closing debate now, we have not received an undertaking that the committee can have a real, full, comprehensive look at this legislation together with the code and that it will hear witnesses and get public reaction before we move forward. Will we be allowed to call witnesses? Will we have full hearings, or will we be cut off again? At each stage, we will be told that something was done.

It takes a while to get the machinery going. Twenty-three committee meetings do not comprise a long period of time when one looks at how we sit. We sit on Tuesday mornings and have had other issues to study. We have started with one or two witnesses and then often we repeat on the next day because we have changing membership, both on our side and on the government side. We have not had the comprehensiveness that I think this legislation deserves.

[Translation]

**Hon. Pierre Claude Nolin:** Honourable senators, I have only ten years experience in the Senate and I did not look deeply into precedent any further back than that. I would like to tell Senator Robichaud and Senator Carstairs that they are doing a great disservice to our institution.

This is why. We are in the midst of a debate on the principle of a bill which raises fundamental questions as to the very existence, the very continuation, of our institution or any other parliamentary institution. You need to realize, honourable senators, that decisions reached in one chamber of a Parliament are going to apply to another chamber in the same type of Parliament. The effect on other legislatures is obvious.

I have listened with a great deal of attention to what Senator Oliver has had to say, and particularly to Senator Joyal yesterday. I did not hear Senator Fraser except when she told us "This is but a preliminary step. We will get our ethics officer and then it will be up to us, within the privacy of our own committees and their decision-making process, to decide what he will do and within what framework he will do it."



That is one position. I would like to see other senators address each of the arguments raised by Senator Oliver and Senator Joyal. I would like to see someone from the other side tell me how the 1689 Bill of Rights is not affected by the decision we are about to take.

Senators Robichaud and Carstairs are doing us a very great disservice. They are certainly acting under instructions, and not of their own free wills. They are bowing to instructions and unfortunately are doing our institution a very great disservice by so doing. I am sure that there are senators here who have never heard of the 1689 Bill of Rights. I am convinced of it.

They surely heard certain honourable senators speak about parliamentary privileges and understood yesterday, in listening to Senator Joyal, that these well-known privileges date back to a peaceful agreement reached after a very lengthy civil war and debate between the British monarchy and the British Parliament. In 1689, this gave rise to a document that today is important to all parliaments modelled on the Parliament of Westminster.

I would like a debate that would certainly not be time-limited. As Senator Lynch-Staunton said, when we know that time is allotted, that means the government has decided to get out its guillotine and send a signal to everyone to say that enough is enough, that the debate has gone on long enough, and that it has to end. And just when we are barely starting to explore these famous privileges.

Senator Joyal is urging us to hold that kind of debate and all that Senator Robichaud, the sponsor of this unfortunate motion, can think to say — and he says it with the blessing of Senator Carstairs — is that this is not important. End of debate. Moreover, as Senator Lynch-Staunton pointed out, we have a report that has been on the Order Paper for I do not know how long, and I do not know who is blocking this debate. Since I do not know the answer, I will not accuse anyone, but I hope it is not someone from the government side; that would be too much. Who is blocking it? If no one is, then you have no interest in having us vote or continue the debate on this very important report.

**Senator Robichaud:** Why did you not start the debate?

**Senator Nolin:** Honourable senators, as a lawyer I make it a rule never to ask a question to which I do not already know the answer. I do not know who is blocking this debate, but I do know that you have not put this report on the Orders of the Day. For us, it is still on the Order Paper and that does not seem to be important. But suddenly it has become important.

**Senator Robichaud:** Honourable senators, this report has been called every day, each time we get to Committee Reports under Government Business.

• (1650)

**Senator Nolin:** I do not know if the report was called each day. Clearly, it is a committee report, and no one ever asked to vote on

this committee report. Perhaps the House is not interested. What is the purpose of this point of order?

**Senator Robichaud:** Honourable senators, I should have said that it was a point of information and not a point of order. It is a bit different. I simply wanted to provide the correct information.

**Senator Nolin:** That does not excuse the unfortunate error. This does a terrible disservice to this institution. I almost feel like challenging Senator Robichaud to respond to Senator Joyal. Has he considered the importance of the arguments raised?

I understand that there are no longer civil wars in Canada, and that it would be difficult for the Senate and the House of Commons to build an army to defend our privileges. Those familiar with British history know that an army was created to defend these privileges. With what result? The king lost. He did not just lose the civil war, he lost his head.

A 60-year civil war ended in 1689. Today, we are being asked to set this aside. We are being told that all we are doing is providing for the appointment of an ethics officer and that we will not be the ones to appoint him but that we will supervise his work. A terrible disservice is being done to an institution that is losing its *raison d'être* and questioning its effectiveness. This motion is unfortunate.

**Hon. Jean-Robert Gauthier:** Honourable senators, I want to be honest. I am not happy to see time allocation imposed on such an important bill. I would even say that this breaches my parliamentary privileges. What is parliamentary privilege? In my opinion, it is simply the right to speak.

I recognize that the government has the right to see its bills adopted. I recall a quotation by Stephen Knowles, in Marleau and Montpetit, *House of Commons Procedure and Practice*, which reads as follows:

The whole study of parliamentary procedure over the years, indeed over the decades, has been an endeavour to find a balance between the right to speak at as much length as seems desirable, and the right of parliament to make decisions.

For the time being, we are considering Motion No. 1, by the Honourable Deputy Leader of the Government in the Senate. If we refer to Rule 40(1)(b), it states the following:

40. (1) When an Order of the Day for a motion to allocate time for the consideration of any item of government business is called:

(b) the Speaker shall interrupt any proceeding then before the Senate and put every question necessary to dispose of the motion not later than two and one half hours after the order is called.

We are one hour and ten minutes into the scheduled two and one half hour period. If all the honourable senators speak in the debate, the House will have recessed before we are done. This irks me, and I will tell you why. I have business standing in my name on the Order Paper. I attend the Senate regularly, follow debate closely and wait my turn to speak.

I consider that my right to speak is essential to put forward my ideas and advance projects and, perhaps, make a bit of a difference. Speaking time is sacred when we do what is right, as parliamentarians, to try and improve the quality of life of our fellow citizens.

I am terribly shocked every day, by the time we adjourn, to see that we have not even reached private bills. The debate deals with legal issues, or what is called closure in this place. But it is not closure at all. It is time allocation, pure and simple. How can only six hours be allocated to the consideration of a bill as important as Bill C-34?

I remember when, in the House of Commons, vicious allegations had been made about certain parliamentarians. It was even rumoured by the police that 14 parliamentarians were suspected and under investigation. That shocked me deeply. It was as if all parliamentarians were being painted with the same brush.

I summoned both the Commissioner of the Royal Canadian Mounted Police and Jim Hawkes, who was the government whip. We asked the Commissioner to put an end to the absolutely unfounded allegations. He said this was a mistake, that he was sorry and should not have done that.

How many times are parliamentarians accused without any basis? I find upsetting this procedure whereby the government debates an issue and makes a decision. But I am utterly disgusted that the government would impose time allocation on an issue as fundamental as the ethics of parliamentarians.

I was a member of the Oliver-Milliken committee. There was prorogation and there was a change. It has been years since we have discussed this idea of having a code of ethics, here in the Parliament of Canada, that would be overseen by both Houses independently of one another. But that is not what Bill C-34 is about.

The French version of the bill uses terminology that I do not understand. For years we have been talking about an "agent du Parlement," an "haut fonctionnaire parlementaire" and all sorts of other terms. I do not accept the term "conseiller en éthique." I find it to be inaccurate and I would like to discuss it.

With respect to the principle of the bill, I have a few things to say, but I will stick to the rule and say that limiting debate on such a fundamental bill is absolutely unacceptable.

[ Senator Gauthier ]

There are bills that interest me, such as Bill C-25, which deserve to be debated, but every time this item is called, debate is deferred. I am ready to speak to Bill C-25. I would like to do so, but ultimately we never manage to address important issues.

Let us proceed with the vote. The time has come to act!

• (1700)

[English]

**Hon. J. Michael Forrestall:** Honourable senators, I hesitate to jump into this debate, but I do wish that I had time to ask Senator Joyal and some of my colleagues on this side some questions on this important issue. I have concerns which about the autonomy of our chamber and the rights of members to adjudicate or rule upon their own procedures and processes.

If I understood Senator Joyal's remarks yesterday, I would conclude that we are about to, unwittingly, give up our autonomy to a major degree. We are about to build into our walls a door through which, at will, the members of the other place can enter for its own purposes, and against which we have no defence, other than to amend this bill that would protect that autonomy.

If we go to the extent of concluding that we should protect that autonomy, then I would be afraid that the public would look at that and say that we want control for a purpose that is other than respectful and healthy.

Honourable senators, had we had the type of debate suggested by Senator Gauthier and others, there would have been an opportunity to explore some of the avenues that are of major concern. I must question the capacity of any body such as this, to consider, in a day or two days — since closure amounts to six hours of debate — the work of a committee that spent part, if not all, of 23 days examining this bill and preparing a report. Those senators who sat on the committee can easily grasp the intent of the verbiage of that report, interim or whatever it may be, but how can the rest of us who did not participate in committee understand what it means? If we cannot understand, how can we contribute? How can we protect ourselves?

I cannot, of course, say to my leader "You make the decision." That would not be fair to him, and it certainly would not be fair to me. Do I say to the learned minds in the chamber, who I have had the privilege of listening to very carefully for 10 or 15 years now, that they should guide me if there were enough time? Honourable senators, it is not closure that is being discussed. Our participation is not wanted. Good law is not wanted.

Perhaps the Prime Minister wants this bill to be passed for a particular purpose. I am not about to attribute motives to anyone, let alone that gentleman, who entered these parliamentary precincts a few months ahead of me. That was a long time ago. However, I do want to know whether our autonomy is no longer important and whether our times have so changed that we do not have to worry about absolute control of our affairs. That may be the case, but I want to debate the issue and I want someone to tell me whether that is so. I do not think it is.



Honourable senators, we have the dilemma. I have a lengthy prepared speech, and were I to read it, my remarks would flow together. They would not be nearly as disconnected as these random thoughts, which I am sharing with you all now. However, I offer those too for your consideration.

How do we protect our autonomy? That is important. As Sir John A. said — as did the man from Halifax who uttered similar words — “What is the value of the chamber unless we have that unfettered right to question, to put forward views?” What is the value of the chamber?

It has been my experience that the best legislation in which I participated was the most hotly debated, not that in which the debate was curtailed. The debate was expanded. It came to include the country, the universities, and the segments of society most directly affected. Strong legislation is legislation that can withstand attack and prove to be correct.

I am being asked to consider an alternative that would allow someone to say, “There goes a crook. Look what he is has done. He has built an ironclad cage around himself so that he is not answerable.” I am answerable to many people, but I am not happy to be answerable for bad law. I have always considered that good law is simply explained. That is law that people will want to obey and will want to protect them. Bad law is law that people instinctively will not obey. Pray God we do not have very much bad law. In the absence of closure and in the openness of debate, we have those freedoms that were granted from the time of Sir John A. and that were carried on through the history of our Prime Ministers. Most of them found strength in their legislative programs that had been subject to wide and open debate across the land. When people naturally want to obey, a law is good.

Honourable senators, I have no right to reject anything, but I am not pleased about what is happening. My friend from Happy Valley was questioning whether this had ever happened in the years I have spent in the chamber. I do not remember closure on an internal matter dealing with parliamentary precedent. I do not remember that ever happening. It could have, but I do not remember it. I would be very sad to remember something like that happening.

• (1710)

**Hon. Herbert O. Sparrow:** Honourable senators, I have three questions of why closure should not take place: The first question is why, the second question is why, and the third question is why. I do not have the answers to those questions.

In all the years that I have been in this place, and as has been stated by other senators today, I have not known any time when closure was put on actions affecting the Senate and the *Rules of the Senate of Canada*.

Not long ago we went through the GST debate. Prior to that time, and shortly thereafter, there were no rules affecting the length of speeches in the Senate. Senators could speak as long as they wanted, only once each, but there was no time limit on

speeches. We are at the point now of restricting speeches to a limited amount of time, 15 minutes, and now to 10 minutes.

For well over 100 years, the Senate served this country well on the basis that senators were free to speak as long as they wanted. They were never faced with closure, either on government legislation or on rules affecting the Senate. This proposed legislation sees the government putting its nose into the business of the Senate. That is one of the main issues here.

Speaking on this issue yesterday, a senator stated that she had heard some senators suggest that we do not need to act in this field immediately because there is no problem. She said that we do not have an ethics problem in the Senate and therefore there is no need to act. She stated:

I think that is true. We do not have an ethics problem in the Senate. I am proud to serve with colleagues in this chamber, as I know we all are. However, I would suggest that there is no better time to act than precisely when there is no problem...

Honourable senators, we are invoking closure on whether we want an ethics officer for the Senate. As has been stated before, we have not delved deeply into the discussion, whether or not this is important.

Why would we appoint an ethics commissioner for the Senate when we have set no rules or guidelines? The suggestion is to put someone in the position and then decide what we might do to put them to work. That is a very bad process. Do we require ethics rules, or are we already covered by the *Rules of the Senate of Canada* and the Constitution and the Parliament of Canada Act? If not, what are we missing? How are we to assure Canadians that we require an ethics commissioner? No, let us establish the commissioner and then decide what the job will be. Are we set up what we call a department within the Senate and spend the thousands and thousands of dollars without knowing what the job is all about?

In all the time I have been in the Senate, when there has been a question in any senator's mind that there may be an ethical problem, we could always go to the law clerk or the table officers to get advice. That system has served us well. We are now superimposing another system because for some reason the government is pushing us to do so. They are pushing us so hard that we are bringing closure to a certain type of debate, which has never happened before.

Gosh darn it, I think there is something wrong with that. It is wrong that we would do this after all of the years that the parliamentary system has served the country so well. Perhaps the government and its ministers are in trouble and are trying to solve matters by sweeping us into a big bag of ethical problems that do not exist in the Senate. If those problems have existed in the past, we have dealt with them. We have looked after them. We are now saying that we are not qualified and not capable of doing that. We are not even capable of having a wide-ranging discussion on this issue.

For over 100 years we have dealt with these issues. This bill has been in the house for two weeks — two weeks — and we are not considering anything that has gone on in history.

I will tell honourable senators this: If you think it is interesting to talk to someone with no memory, it is not. We have to rely on our memories to know what has served us well, and we are not well-served by introducing closure at this time, on this subject matter.

**Senator Grafstein:** Would Senator Sparrow allow a question or two?

**Senator Sparrow:** Indeed.

**Senator Grafstein:** The honourable senator has not answered any of the “whys.” We were waiting breathlessly for the romantic ending to the first, second or third “why.” Perhaps someone will answer the “whys,” because I have exactly the same questions. I think I know the answer, but I do not like the answer, so I am in a position of repelling it from my memory. We feel uncomfortable when we see an ugly issue come up and we try to suppress it. I am trying to suppress the answers to the rhetorical questions that the honourable senator has raised.

I wish to ask a question that goes to the process of this particular measure. The honourable senator was appointed to the Senate before I arrived; he is the Dean of the Senate. When I first arrived here, our leader was the Honourable Allan MacEachen. The first thing he said after several months of assessing the geography of the Senate was that if we wanted to be a credible institution, we had to return to the principles of the Constitution which was that the Senate should be a chamber of sober second thought. He felt that pre-study was anathema to the concept of a chamber of sober second thought. The Senate was not to rush to judgment, was not to influence government when they were doing their business; we were to wait until they had concluded their business and then attack the measure in a careful and calculated way to determine whether or not it was consistent, persistent and adequate.

Senator Andreychuk has raised that issue more recently. My colleagues will know that since I have come here, after trying to understand that issue, I came to the conclusion that I was a true believer in no pre-study.

In Bill C-34, we have a bill, as Senator Andreychuk points out, that has been sort of pre-studied, but is not quite a bill, a paper or legislation; yet, we have been told that we have had more than adequate time to explore a measure that was done on the other side some six months ago.

• (1720)

My question to you is: Were we wrong, as I believe we were, to enter into pre-study of this area? It was not a bill. We now find ourselves in the conundrum of again hearing from the government, “You have to hurry up.” Give us some wisdom

about the matter of pre-study that was adopted here and whether it was appropriate in the circumstances, or is it the cause of the confusion that we are confronting today?

**Senator Sparrow:** The honourable senator mentioned “wisdom.” I think of him as being the wise man who is asking these questions. We need some more wisdom in this discussion and on this whole issue.

I was here when pre-studies were done on almost every bill that was introduced. It was a mistake. Let me tell you why it was a mistake. The committee system does not get a lot of publicity. When a bill was finally referred to committee, the members had already examined it so the bill was reported rapidly to the Senate, whereupon the Senate would pass it. In those instances, we got the feeling that we were rubberstamping. This is what, presumably, was to happen here. We were to conduct a pre-study without seeing the final bill and without knowing what issues might arise. I was not a member of committee, but I went to most of the hearings. The committee went through a broad scope of subject matter to try to determine what may be coming forward.

The question is whether we were correct to do that pre-study. I think we were not. Now we have the actual bill before us, so now is the time to do that study, not to try to impose closure on the debate on the bill.

Not all senators can attend all committee hearings. Essentially, all bills that are referred to committee are examined by seven senators who are on the government side of the house. They control the legislation. They report back to the Senate, and we tend to rubberstamp it. Who makes the decision? We do not discuss the issues.

This bill deals with an issue that will affect the future of this institution. We are being told that the matter has been dealt with by the committee, and that broad discussion in the Senate of this issue will not be allowed. That, too, is a mistake.

It was a mistake to pre-study the bill. We should not do that in the future. Now, just because we did that pre-study, we are being told that the bill has been with us for a long time, but in actual fact, we have only dealt with the bill for two weeks. That is the crucial aspect of this debate.

**Senator Andreychuk:** I should like to ask a question.

**The Hon. the Speaker:** I regret to advise that Senator Sparrow’s 10 minutes have expired.

**Senator Stratton:** Honourable senators, it is always interesting to deal with questions of ethics, because each of us believes that we have a reasonable set of values. Then we find out that, in many instances and in certain circumstances, perhaps we do not. Then because of that realization, we decide to change. That is exactly what has transpired here.



The government, in particular the Prime Minister, will wave a magic wand, create a code of ethics, and suddenly we will all be holier than thou. We know that will not happen. We will still make mistakes. There will still be bad guys. We recognize that, inevitably, we will run against that. This magic wand will not produce the magic that we would all like to envision, because we are human beings and we will make mistakes.

When you think of the premise of being human and, as such, making mistakes, deliberately or otherwise, creating a code of ethics to make us holier than thou and better than anything, is really a lot of rubbish. We cannot, by creating a code of ethics, be perfect. It is impossible. Our values come from our life experiences, including and how we were raised. It primarily emanates from within.

Honourable senators, we have rules that allow a committee to proceed to a pre-study of a bill. We held 23 meetings during the course of that pre-study, during the course of which we discovered it was not a simple thing to do. We found, as we were going through it, that we were virtually dealing with a moving target. We constantly ebbed and flowed from one position to another. As we heard from different experts, our opinions varied like flowing water. You could sense the changes.

It was suggested by the government that the committee should submit an interim report. If we wanted to have any input into the bill itself, we had to lay our hand on the table; and we did that. The Leader of the Government in the Senate congratulated us and said that all our recommendations were accepted and incorporated into the bill. However, there was a fundamental disagreement as to the manner of the appointment of an ethics commissioner. There were varying opinions on that issue. As a matter of fact, at committee, had a vote been called on this issue, I am sure the side that wanted the Senate itself to appoint the commissioner would have won the day.

The point is that there is still a lot of room for in committee and in this chamber, as to who should appoint that ethics commissioner. I fundamentally believe that individual should be appointed by this chamber, because, when someone is imposed on you by someone else, and you then give that person a set of rules that you develop, then I think that is wrong. Once the government imposes the position, then the courts can march right in. I am fundamentally opposed to that and will continue to be so, as I think are many of us in this chamber.

To return to the question of whether it is appropriate to impose closure at second reading, I should like to know how many times closure has been imposed on the debate on second reading of a bill in this chamber. How often has that happened at the second reading stage of a bill which deals with an issue such as this that is fundamental to the moral values of everyone in this chamber?

The argument has been made that we had all kinds of time to react in this chamber. Honourable senators, I disagree. We had all kinds of time to react in committee and while we were doing that,

our opinions changed because of the evidence that was presented. It was a moving target, it is still a moving target, and it will continue to be such. We do not know where we are going with this. How can closure be imposed at second reading when we were not even halfway there at the pre-study in committee?

It is fundamentally wrong to impose closure at this stage. If you had the experience of going through this in committee, watching that ebb and flow, you would not agree with this at all. It is wrong because there is so much work yet to be done in committee with respect to Bill C-34. There is so much work yet to be done.

• (1730)

It is fundamentally wrong to impose closure on a second reading. It is wrong, wrong, wrong, which is "why, why, why" Senator Sparrow and I are opposed to this.

As a result, I would ask honourable senator to give serious consideration to defeating this motion. After the government pats itself on the back for pushing Bill C-34 through, it is inevitable that a member of Parliament — from this chamber of the other place — will get nailed. What then? A hole will be found in the rules somewhere. There will be a wiggle here and a wiggle there. We know that will happen. The media and the public will then say, "We thought you had a set of rules established, a code of ethics established, but, lo and behold, you missed this. What good was all that work?"

All that will occur because we decided arbitrarily to close debate on the bill, to move it forward despite hell or high water. I think that is wrong, wrong, wrong, again.

Honourable senators, in concluding my rant. I would ask you to seriously consider defeating this motion.

**Senator Sparrow:** Honourable senators, I have a question for Senator Stratton.

In his discussion, he talked about the committee work. Was much consideration, or any, in fact, given to the code of conduct, or did the committee only engage in discussions related to the basic issue of a commissioner? Has the honourable senator come to a conclusion in his mind as to whether the Senate even needs an ethics commissioner?

**Senator Stratton:** That is part of the whole problem. We are not there by any stretch of the imagination. As Senator Sparrow said previously, we already have rules. There is the Criminal Code, as well as other codes that apply to us in this chamber. We have not concluded the debate as to why we need a code of ethics or an ethics commissioner? We are still involved in those discussions. How much longer do we need? We do not know. To presume that we know the definitive answer to that question is premature. We need more time for debate on this issue. We desperately need that time because, we find out gradually, over the fullness of time, where to go. It is way too early to know these things.

**The Hon. the Speaker:** I regret to advise that Senator Stratton's 10 minutes have expired.

**Senator Grafstein:** Honourable senators, first, I beg the indulgence of the newly appointed senators. Some of our older colleagues — older in time spent here, not older in age — have heard me on this subject before. I am delighted to see so many new senators interested in this matter because it does directly affect their future careers here in the Senate. It affects their privileges and the way they conduct their private and public business. I am delighted that they have stayed here to spend the time to listen to the debate.

I have learned in my time here that I learn far more from the debates here in this chamber than I do in committee, because the committees are limited to very narrow issues. When an issue receives full debate in the Senate, there is a better opportunity to assess which of the various viewpoints to accept or reject.

I will start by giving you my insight into this process, and where we have arrived because of this process. I start with the old common law principle that principles and practices march best when they march together. When principles and practices work together, you will find you come to a satisfactory result. Unfortunately, here, our practices and principles have diverged. I point that out to honourable senators based on the deputy leader's comments. There is a huge divergence of opinion, not only on the other side but also on this side.

Let us start with pre-study. As Senator Sparrow and Senator Andreychuk pointed out, there was a practice some time ago that the Senate would pre-study a bill when it was in the other place, in order for us to "whisper" and influence the decisions in the other place. Then the government said that, by the way, if you do not do this quickly and speedily and effectively, you would be ruled out, because the big whip would be on this side and, in effect, you would not be able to have your word. So if you really wanted to influence controversial legislation, like the terrorist bill, you had better pre-study it.

I objected to that. I felt the House of Commons should do its work on their side, as the Constitution provided, and we here in the Senate should do our work, and come to a studied conclusion. Now we find that the terrorism legislation is not very good because we had to rush.

The first principle I learned here I learned from the great Senator Sinclair. His advice was, first, to read a bill and, second, not to rush to judgment on it. He said: "Listen carefully to what they say on the other side, and then listen to your colleagues. Attend committee meetings follow the procedures and read the committee reports."

We did not follow procedures here. We leaped to the government's appetite to get this thing done quickly. Now we have a mess on our hands because it is not clear as to what we are dealing with here.

We started with a little mess, and it is confusing. Now, let us look at how much more confusing is the divergence of principles from practices. We have a carefully — reasoned study, done by Milliken and Oliver, that looked at this question for, lo, many months and came to some very clear-cut conclusions.

The first bill that came out, that we were supposed to study, did not even look at Milliken-Oliver in any coherent way. The government took the name and said they were looking at it, but they hollowed it out and did not follow Milliken-Oliver.

We heard yesterday from Senator Oliver that his advice was not followed. We have been told by the government, based on the interim report, a Senate report, which was to consider the Milliken-Oliver report, and heard, just recently, from the deputy leader, that recommendations on the Milliken-Oliver report were adopted, but the key recommendations were not adopted.

I urge honourable senators to do the second thing that Senator Sinclair advised, that is, read the interim report. We are told that the report's recommendations have been incorporated. However, the chairman of the committee and Senator Ringuette and Senator Rompkey and other senators know the work of the committee was never completed. It was an interim report. It says so in the report. I will read it to you, but I urge you to read the whole report. This is not a long or complicated report. It states:

While considerable work remains to be done, the members of your Committee believe —

This is a report that the deputy leader says has been completed. This is an interim report. The major paragraph on the first page of the report says, "While considerable work remains to be done..."

This issue has not been brought to a vote because it was an interim measure, done on the fly.

Let us look at just one recommendation then, from the heart of the report:

3(d) A Senate ethics officer shall be appointed after agreement of the leadership of the recognized parties in the Senate, followed by a confirming vote in the Senate.

That is not so in the bill. Leadership is to be consulted. As Senator Oliver and Senator Joyal said, it is consultation but it is not agreement. The heart of the report on which we are being asked to hurry up and finish has not been followed. It has been hollowed out. It is not fair and it is not accurate.

• (1740)

Now, whenever we have rushed to judgment in this chamber, we have always been wrong. I will not give examples. Senator Prud'homme will tell us about the terrorism bill. We said, "Go slow. Let us have a review. Let us have a sunset clause. Let us be fair." Now there are big holes in that bill. We all know it. Senators know how strongly I feel about terrorism measures. By the same token, there was a law. We were not allowed to participate at committee because we objected to certain provisions of the bill. We had to attend as independent senators, as Senator



Prud'homme and Senator Joyal did. I obviously was not appointed to that committee but I asked to be on it. At the end of the day, when we rush to judgment, here we are. As senators on the other side have said, this is a major issue where civil rights are in jeopardy. Where are we? It is not even a priority. Yet, we are told that this measure is a priority when the committee says that there is still a lot of work to be done.

Let me go on to the report that we are asked to rubber stamp. I would like Senator Milne and Senator Fraser to participate because they were there. Let me read section 22, page 9 of the interim report of the Rules Committee, which states:

In considering how this system should be structured, we have been mindful of the separate constitutional roles and functions of the Senate and senators, and the fundamental importance of Canadian democratic institutions... These are our primary concerns....

So Milliken, Oliver and Joyal say, following the Milliken-Oliver framework, that we should be the master of our rules and we should not try to separate and not be conjunctive with the courts in order to preserve the autonomy and the dignity and independence of the Senate. Yet, we are asked to have an officer appointed, named by the government, to opine on our conduct, which allows no sensitivity for the separation of powers between the executive, or the House of Commons, or the Senate. By the way, we have one officer, or a separate officer, appointed by the government after consultation, which will allow the courts to play their games in an exculpatory clause. Every lawyer in this chamber knows — Senator Day and Senator Joyal knows this; I apologize to those of you who are not lawyers — that when you add an exculpatory clause and say that the courts shall not intervene, what do they do? They intervene. It is an invitation for them to find their way into the heart of legislation. These courts, because of the Charter, not only intervene, but they ramp themselves up to intervene.

Honourable senators, this is a dangerous precedent that goes to the heart of the constitutional framework. Even though it goes to the heart of the way this institution operates, the heart of the independence of the institution and the heart of the separation of powers between the courts and the legislature, we are told, "guillotine." "Do not think about it. Do not ever let the new members of the Senate fully understand the ramifications." Well, they have not had a chance to do that because they were not on the committee. I am delighted that they are here. I know the pressure on them.

To think that we have our guillotine and a whip on a matter that is not the subject of paramount government policy is, as the Dean of the Senate says, almost beyond belief. Why so? For what purpose? Do we want to stall this legislation? I do not want to stall it. I want amendments. The government says: Show us your amendments. Senator Joyal provided amendments. Let us study them, but let us do it in an appropriate way. We must all understand what we are doing here because it affects the activities — and I will say it again — it affects the activities of each and every senator. No one can take an early plane home and

say, "By the way, this bill does not affect me." It will affect each and every senator in how we conduct our private and public lives.

I am proud of every member of this Senate. When we have had a problem with an individual senator, we have dealt with it appropriately and we will again.

I conclude with the comment of my great colleague Senator Sparrow, who says, "Imagine this: We are going to set up an ethics officer." Senator Joyal has said it is an officer. Is it an officer? Is it a jurisconsult? What does it mean?

There is a warning in the committee's interim report at page 3, paragraph 3(j), which states:

For greater certainty, the Committee intends to give further consideration to the relevance of the *Privacy Act*, the *Access to Information Act*, and the *Federal Court Act* to the activities of the Senate ethics officer...

We have not started our work on those acts, and now we have a bill. My view is this: Please give us the time to debate this bill at second reading. Do not impose a six-hour rush to judgment.

**The Hon. the Speaker:** I am sorry to interrupt, but I must advise that the honourable senator's time has expired.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I have listened carefully to the —

**Senator Corbin:** If she speaks —

**The Hon. the Speaker:** I think Senator Corbin is worried about having time to speak. Senator Carstairs has half an hour and there is about half an hour's time left. In theory, we could go to the end of the two and one-half hours with the next speech, but I do not know that we will.

**Senator Carstairs:** Senator Corbin and Senator Mahovlich have indicated that they would like to speak. If they wish to do so, I will defer, but I do want some time to put my comments on the record.

**Hon. Eymard G. Corbin:** I thank the honourable leader. I think she ought to yield to the backbench because she is taking time away from debate. I think that would be the honourable thing to do, in my humble opinion. I will not speak very long. I usually do not.

[Translation]

Honourable senators, at the risk of repeating myself and becoming boring, I would like to say that I have seen both Houses of Parliament evolve in a disturbing way since 1968. What bothers me most is this new practice of imposing time limits and bringing in closure in Senate debates.

I believe that not only is this practice worrisome now, but we should be more worried about the future. We know to what extent precedents are becoming important in parliamentary practice and we know to what extent the executive branch does not hesitate to use them against us.

This Chamber is supposed to be a place of sober second thought. I must admit that frankly, as we speak, I am not able to speak knowledgeably and intelligently on the essence of this bill. We have set in motion a chain of events that will force us to make a decision at second reading, when the principle of the bill has not even been properly debated, in my opinion.

I have one more problem. I would truly have liked to be here the other day to hear Senator Carstairs speak. I had to leave the Senate chamber to carry out other senatorial duties. I also wanted to be here for Senator Oliver's speech but the same thing happened. Yesterday, while Senator Joyal was speaking, I had to leave for a meeting of the Standing Senate Committee on Foreign Affairs.

• (1750)

Some days the topics dealt with here are of debatable importance, but when it comes to fundamental issues such as these, which engage the institution and us as individuals, I want to be fully informed before I vote. I have here the three *Debates of the Senate* containing the speeches of the people I have just named. I will take these reports with me this weekend and ask my granddaughters not to disturb their grandfather too much and perhaps on Monday, I will be able to appreciate my colleagues' comments.

Certainly, the debate being held right now shows how controversial the bill is. It shows how uncomfortable we feel. I am extremely uncomfortable. I have a great deal of respect for Parliament, for the procedure and rules. I do not agree with many of the provisions in the current rule; like Senator Sparrows and others, I was in the Senate during that time. I believe the debates that were held before the introduction of the current rules were much more interesting and truly got to the heart of the matter. Obviously, things sometimes took a bit of time, but that is what democracy is all about: taking the time.

[English]

This is not the chamber of second speed. It is the chamber of sober second thought — not sober second talk, but thought. I have not had time to think the whole matter through. In fact, as I listen to my colleagues today on both sides of the chamber, I see new issues rising from the foam of controversy, and I want time to think those over, for the sake of the institution and for the sake of the rest of the time I will spend here. I am most uncomfortable with the whole process.

I do not want the government to be insulted if I were to decide to vote against this proposal for allocation of time, but I also do not want the executive to rough me up. I do not like arm-twisting. It has been tried on me before. I have had calls at nine o'clock on Sunday mornings. People would be well advised to get to know me better if they are to attempt those kinds of tactics.

In any case, honourable senators, the best thing to do in the circumstances would be for my good friend Senator Robichaud — my New Brunswick colleague, Senator

Robichaud — to be well advised to give this matter some deep thought over the weekend.

The other point I wish to make is that, yes, the whip will probably scrounge a majority to get this matter through, to refer it to committee, and maybe to impose closure there and impose closure here when the bill comes back, but that is not the way to go.

I do not want to belittle the dignity of new senators here, but I think that new senators who are not familiar with Parliament, the whole tradition underlining Parliament and freedom of speech as we exercise it here, should put on the brakes before blindly accepting to deal with this legislation. I am very serious in saying this.

[Translation]

The future of this institution is at stake. We have heard excellent comments today from all sides. Perhaps the debate has resulted in senators taking partisan positions, but I did not consider those alone. I considered the arguments, the reasoning and the weight of that reasoning and, frankly, I was impressed. On the weekend, honourable senators, I will decide how I intend to vote on this time allocation motion, but I want to make known my unease and I will not vote for something I do not understand.

[English]

**Senator Carstairs:** Honourable senators, I welcome this opportunity to answer many of the questions that have been posed this afternoon. It is appropriate that, when honourable senators ask questions in this chamber, they get answers.

We have been asked: Why time allocation now?

Let me begin by saying that time allocation is just that. It allows for six more hours of debate. It does not shut the debate down. It allows for six more hours of debate.

Why are we imposing it at second reading? Honourable senators, it is not as though it has not been used at the second reading stage of a bill before. Senator Andreychuk asked if that had been done previously. It was certainly used on March 29, 1993 by the now-Leader of the Opposition, who was then the deputy leader, after not a single speech by the opposition.

**Senator Lynch-Staunton:** Perhaps the honourable senator should read the reasons for that.

**Senator Carstairs:** There was not one single speech by opposition members, who happened to be Liberals at that particular time. There is precedent for this.

**Senator Lynch-Staunton:** Two wrongs make a right?

**Senator Robichaud:** You admit you were wrong.



**Senator Carstairs:** There is precedent for using it at second reading.

The Leader of the Opposition also asked why we were using it in respect of this bill and not with regard to Bill C-17, a most complicated bill. Honourable senators, I would suggest that this bill has been not one year or two years or three years in the making; it has been 30 years in the making.

As concept, this bill began with a green paper from Allan MacEachen in 1973, 30 years ago. Ten years after that, there was a report called the Stanbury-Blenkarn report. Ten years after that we had the Oliver-Milliken report. Yet, here we are, in 2003, and none of the recommendations in the green paper, the Stanbury-Blenkarn report or the Oliver-Milliken report have ever come into force and effect. We have had 30 years of debate and we still do not have a policy.

We have before us a bill that is simple in nature. It calls for the establishment of an ethics commissioner. That is all it does, honourable senators.

**The Hon. the Speaker:** I am sorry, Senator Carstairs, but, it being six o'clock, I must rise to leave the Chair unless there is agreement not to see the clock.

**Senator Carstairs:** I understand, Your Honour, that when dealing with a time allocation motion, we do not see the clock.

**The Hon. the Speaker:** I will read the rule. Rule 40 reads:

(1) When an Order of the Day for a motion to allocate time for the consideration of any item of government business is called:

Rule 40(2) reads as follows:

During debate on the motion:

(d) whenever the debate is interrupted pursuant to rule 13, the debate shall be resumed when the sitting is resumed.

Accordingly, the rule anticipates that we would observe rule 13, which is the rule regarding six o'clock, which is as follows:

(1) Except as provided in section (2) below, and elsewhere in these rules, if, at 6:00 o'clock in the afternoon, the business be not concluded, the Speaker...leaves the Chair until 8:00 o'clock, the Mace being left on or under the Table...

Therefore, the six o'clock provision of rule 13 applies on the motion for time allocation. It does not, however, apply to the debate if the time allocation motion is passed.

Accordingly, it being six o'clock, I ask, is it your pleasure, honourable senators, not to see the clock?

**Some Hon. Senators:** Agreed.

**Some Hon. Senators:** No.

**The Hon. the Speaker:** I am sorry, do you wish to not see the clock, honourable senators? Say "no" if you do not and "yes" if you do.

**Some Hon. Senators:** No.

**The Hon. the Speaker:** You wish to see the clock?

**Senator Lynch-Staunton:** We want to see the clock.

**The Hon. the Speaker:** I will leave the Chair.

The sitting was suspended.

• (2000)

The sitting of the Senate was resumed.

**The Hon. the Speaker:** Honourable senators, I will call on Senator Carstairs and advise the chamber that there are 10 minutes left of the time allocated for the motion.

**Senator Carstairs:** Honourable senators, we have heard a lot in the discussion on this time allocation motion about the fact that this is a debating chamber, and I agree. It is, of course, a debating chamber. That is why immediately after my speech on October 7, the Deputy Leader of the Government and, I must say, concurred in by the Deputy Leader of the Opposition, encouraged senators to speak on Bill C-34. Each time the item was called, they were encouraged to speak on Bill C-34. It happened three days in a row that they were encouraged to speak, and no one chose to speak. We cannot force senators to debate. When they choose not to debate, I do not think they can then say, "Well, I wanted to speak but did not have time to speak," because they did have time to speak.

More important, we must remember that this is not just a debating chamber; it is a decision chamber. We make decisions. We vote and our votes are counted.

All we are asking is that this vote be taken on second reading and that Bill C-34 then be referred to committee where more debate and more discussion will take place. When the committee reports, there will be a third reading stage where more debate will take place —

**Senator Lynch-Staunton:** And no time allocation?

**Senator Carstairs:** — before we finally come to a decision on the issue of a vote in this chamber.

Honourable senators, we have been waiting 30 years to vote on this issue. It is time for us to vote.

We have heard that this bill is being rammed through. This bill has some history — and it was not subjected to pre-study. This bill was presented in draft form, the same way Bill C-36 was presented in draft form. We were asked for our comments. We were asked for our contributions to that discussion and to that debate.

In his question to one senator, Senator Grafstein said, "Well, what are those four points that senators wanted in their interim report? What were those four changes that senators on the committee wanted and now have in this new bill?"

They wanted an ethics officer for each chamber because the original draft bill called for one ethics officer. Senators argued, "No, that is not good enough. We want our own ethics officer." This bill provides for our own ethics officer.

Members of the committee said they did not like the method of appointment and wanted input from the Senate. What does this bill provide? It provides for a vote in this chamber on who will be our ethics officer.

Senators in the committee did not like the five-year term. They argued that that would be more appropriate to the electoral cycle of which we are not participants. Thus, the bill does what the Senate committee recommended and provides for a seven-year term.

Senators said that the term should be subject to reappointment. What does the bill say in that regard? It can be subject to reappointment.

There is no question that the Senate committee was not sufficiently ready to make a decision on a certain issue, an issue that I think our committee must study. The issue is: Should this be a rules-based system or a statute-based system? We have heard arguments in favour of both. Those arguments, I think, are very legitimate. However, senators, we are a decision chamber. We must come to a conclusion as to whether it will be rules-based or statute-based.

There is no question that I have a preference. I prefer a statute-based system. That preference has absolutely nothing to do with the fact that I am the Leader of the Government in the Senate and everything to do with the fact that as a member of the Manitoba legislature for eight years I was subject to a statute-based system that worked. Thus, I have firsthand experience with a statute-based system. Each year I had to file with the clerk of the Manitoba legislature, indicating my assets. The only thing wrong with that system was that I did not have an ethics officer I could go to with my questions. Because I was so concerned, I filed everything — everything — not only for me but for my husband. I did that because I did not want in any way for there to be any conflict. If I had had an ethics officer that I could have gone to for advice, then I may have done things differently. I wanted someone who could give me that advice. Since our legislation did not provide for an ethics officer, I did everything beyond what the statute actually requested.

Honourable senators, we talked about the fact that this was an interim report. Senator Stratton said that they were not happy with the interim report, or that is what he seemed to imply.

During the break, I took a look at the interim report, and it was voted on unanimously. No senator raised concerns that the

interim report was inadequate. Presumably, then, it met the needs of those who participated in drafting the report.

On May 1, 2003, I gave a speech in this chamber on the report. Because the legislation had already been tabled in the other place, I went into some detail about the changes that had taken place.

Senators, that report has been on the Order Paper for 33 days — 33 days. No one has chosen to speak to it — no one.

Someone asked why we did not bring it to a vote then. We did not bring it to a vote because we wanted to give honourable senators the opportunity to speak to it.

We have a situation, honourable senators, in which we need all voices to be heard. That is why in just a few moments we will begin a six-hour debate.

I hear some giggles and laughs from the other side. If you do not wish to participate in the debate, then you will have said it all. You will have said that you do not wish to participate in the six-hour debate, should this motion pass.

Honourable senators, we are now dealing with a bill that has passed the other place. I was interested in how people in the other place voted. I do not suppose it would surprise honourable senators that all the Liberals voted for it — every single one of them. Every single Conservative who voted in the other place voted in favour of the bill. Every single member of the NDP voted in favour of it. Therefore, all I can say is that the bill must have some merit worthy of our careful consideration and study in committee.

We are voting tonight, first, on time allocation and, then, should that motion pass —

**The Hon. the Speaker:** I am sorry to interrupt the Honourable Senator Carstairs, but the time provided for debate has expired.

Pursuant to rule 40, it is now my duty to put the question.

It was moved by the Honourable Senator Robichaud, seconded by the Honourable Senator Rompkey:

That, pursuant to rule 39, not more than a further six hours of debate be allocated for the consideration for second reading of Bill C-34, An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence;

That when debate comes to an end or when the time provided for the debate has expired, the Speaker shall interrupt, if required, any proceedings then before the Senate and put forthwith and successively every question necessary to dispose of the second reading of the said Bill; and

That any recorded vote or votes on the said question be taken in accordance with rule 39(4).

Will those honourable senators in favour of the motion please say "yea"?



**Some Hon. Senators:** Yea.

**The Hon. the Speaker:** Will those honourable senators opposed to the motion please say "nay"?

**Some Hon. Senators:** Nay.

**The Hon. the Speaker:** I believe the "yeas" have it.

*And two honourable senators having risen:*

**The Hon. the Speaker:** Call in the senators. It is a one-hour bell.

**Senator Stratton:** Honourable senators, I rise on a point of order. In the motion that Your Honour just read, the last sentence states:

That any recorded vote or votes on the said question be taken in accordance with Rule 39(4).

I ask Your Honour to refer to rule 39(4), which clearly states that the vote shall be deferred. I am reading the last part of the last sentence on page 40, which states that:

...any standing vote requested in relation thereto shall be deferred until 5:30 o'clock in the afternoon of the next day thereafter on which the Senate sits;

**Senator Robichaud:** Honourable senators, I think that part of the rule applies to the vote on the main motion and not the vote on the time allocation motion, which is the vote that we will be taking now.

**The Hon. the Speaker:** On the point of order, I should read the rule that applies to what is before us now. It is rule 40(1), which states:

When an Order of the Day for a motion to allocate time for the consideration of any item of government business is called:

(b) the Speaker shall interrupt any proceeding then before the Senate and put every question necessary to dispose of the motion not later than two and one half hours after the order is called; and

(c) any standing vote requested in relation thereto shall not be deferred and shall be taken subject to the provisions of rule 66(1).

Rule 66(1) states:

Unless previously ordered or elsewhere provided in these rules, when a standing vote has been requested in accordance with rule 65(3), the bells to call in the Senators shall be sounded for sixty minutes unless otherwise ordered, and with leave of the Senate.

Accordingly, it is a one-hour bell. The vote will be taken at 9:15 p.m.

• (2110)

Motion carried on the following division:

#### YEAS THE HONOURABLE SENATORS

Carstairs  
Chalifoux  
Christensen  
Cook  
Cordy  
Day  
De Bané  
Fairbairn  
Finnerty  
Fitzpatrick  
Fraser  
Hubley  
LaPierre  
Léger

Mahovlich  
Massicotte  
Merchant  
Milne  
Pearson  
Phalen  
Plamondon  
Poulin  
Ringuette  
Robichaud  
Rompkey  
Smith  
Trenholme Counsell  
Wiebe—28

#### NAYS THE HONOURABLE SENATORS

Andreychuk  
Atkins  
Beaudoin  
Cochrane  
Grafstein

Joyal  
Lynch-Staunton  
Sparrow  
Stratton—9

#### ABSTENTIONS THE HONOURABLE SENATORS

Banks  
Corbin

Prud'homme—3

#### PARLIAMENT OF CANADA ACT

##### BILL TO AMEND—SECOND READING— VOTE DEFERRED

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Graham, P.C., for the second reading of Bill C-34, to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence.

**Hon. Gérald-A. Beaudoin:** Honourable senators, I am pleased to participate in this interesting and important debate. In 1867, Canada became a federal state and is today very well considered in the concert of federations. In 1982, we entrenched, in the Constitution of Canada, the Canadian Charter of Rights and Freedoms. As former Chief Justice Brian Dickson said, it was the most important event since 1867.

Because it is in the Constitution, that Charter is binding. Our legislation, our statutes, our laws, and all legislative measures at the federal and provincial levels are bound, as are the ordinances and the delegated legislations adopted by our three territories. The Charter also binds the executive branch and the judiciary. What about the privileges of the Senate and the House of Commons? Do they come under the Charter? I want to deal with that question.

• (2120)

Senator Oliver, in his speech on Tuesday last raised the right question: Does the Charter of Rights and Freedoms trump parliamentary privilege and will the Charter be applied to the activities of an officer or commissioner of ethics, thus giving the courts the role as ultimate arbiter over the meaning, the extent and the application of the privileges of an honourable senator?

At the outset, I must say that the Charter is at the heart of the Constitution. From now on, all laws should respect not only federalism, but also the Charter. The influence of the Charter on legislation is huge. In 20 years, the Supreme Court has rendered 450 decisions on the Charter. That is unprecedented in our history.

That being said, the Charter does not necessarily regulate everything. For example, I am inclined to think that what we call *lex parliamenti* does not come under the Charter. However, what is *lex parliamenti*? That is the question. The Senate has the inherent right to govern its internal operations. This is a legislative house and, with the House of Commons, it comprises the legislative branch of the federal state. The legislative branch is one of the three great powers. We need and we have autonomy, and the Supreme Court respects that autonomy. In any great democracy, the three powers are divided. It is a question of degree, depending on our system, parliamentary or presidential.

More and more cases relate to parliamentary privilege. Senator Oliver referred to many of them: *Vaid*, *Donohoe*, *Harvey*, *Taffler v. Hughes*, *Morin v. Anne Crawford* and, finally, *Roberts*. In my opinion, this is law in the making. The tendency so far seems to extend more and more to the application of the Charter to parliamentary privileges.

The present Chief Justice of Canada, the Right Honourable Beverley McLachlin, has clearly expressed her point of view, according to my colleague, Senator Oliver.

If a principle is enshrined in a statute, a court may interpret that statute. This is our system. No one denies that. However, we have cases where the Supreme Court has stated that the question before them or part of it should be dealt with by Parliament and not by the court. We have cases where the Supreme Court has stated what the Constitution is and returned the matter to Parliament for the adoption of a legislative act.

[ Senator Beaudoin ]

There is a dialogue between the Parliament and the judiciary. I agree with that; it is a very good thing. In my opinion, this debate will continue. The judgment of our Supreme Court, in my view, will establish the dividing line between what is a privilege that the court will treat as such and what is a principle of law that comes under the competence of the court. For the moment, we cannot be more precise.

[Translation]

The trend today in our Parliaments is towards increasing legislation. The State intervenes in just about everything. People do not realize that the more legislation there is, the greater the application of the 1982 Charter of Rights and Freedoms becomes.

Our parliamentary system has deep historical roots. Over the centuries, a number of privileges have developed to help our Parliaments to do their job. We must not imagine that these privileges will always remain unchanged. There is a tendency to regulate everything nowadays. We must move with the times. Codes of conduct are increasing in number. We must not assume that legislatures can do anything they want. Employees of legislative chambers are entitled to an employment code, or at the very least fair principles of employment.

That is why I am inclined to think that the number of cases relating to parliamentary privilege will increase for some years to come. The courts are becoming more involved. That is the current trend. If Parliaments retain privileges, which I feel are necessary, a way must be found to ensure that the principles of justice and our values are respected. We can no longer operate in a vacuum.

On the other hand, a balance must be struck between the legislative, the executive and the judiciary. The three branches of the State are all entitled to autonomy so that they may do their jobs properly. There is a dialogue between the courts and the legislators. This we have seen when we were enacting terrorism legislation and will see again in connection with parliamentary privileges.

In my opinion, legislative chambers, courts and ministers all require a certain minimum of privileges if they are to do their job. I still believe that the Supreme Court, which has its own privileges — not holding its deliberations in public for instance — will understand that a certain internal autonomy must be respected for the three key powers of the State. In fact, I would say that this is absolutely the case.

That said, a privilege is still a means. Justice as a whole must be respected. The three major powers have an obligation to do so.

[English]

In conclusion, if we are truly interested in maintaining our parliamentary privileges, it is our duty to define them adequately, as stated so well by my colleague Senator Oliver. Some internal operations of the Senate are necessary for the passage of bills in our chamber and for the work of our committees. The executive, the judicial and legislative branches need autonomy, and the courts will respect that principle.



As I said, we are in a period of law in the making. We cannot decide everything at the same time. I am inclined to think that the courts will stop somewhere because, as our history demonstrates, the courts have not, so far, exceeded their control of constitutionality of laws, which, in Canada, is fundamental.

This being said, our two legislative houses should respect our values and apply them in the domain of *lex parliamenti*; they have no choice. The rights and freedoms are everywhere, but they may be applied in manners that differ.

On the subject of the code of ethics, if a code is adopted by way of a statute in the Senate, it is subject to the Canadian Charter of Rights and Freedoms. The Civil Code of Quebec is subject to the Charter, as is the Criminal Code of Canada and as are the various labour codes at both federal and provincial levels. No one may deny that. However, if we have a commissioner of ethics, chosen according to our rules, and acting in accordance with our rules, the question may be a different one.

One way or the other, the Supreme Court and our legislative house, if we are vigilant and if we do our jobs, will come to a certain compromise.

• (2130)

We have a dialogue between the courts and the legislative houses, but we have to be there. We have to do something. We have to fight for this. It is because I attach so much importance to this very difficult point of law that I think we should be very vigilant.

No doubt, the situation will change. No doubt, some parliamentary privileges will change over the centuries. They have been there for centuries, and they have importance, more or less, depending on the circumstances. However, our system is very good. There will be some kind of compromise, as I said, but we are there to defend our internal autonomy. As the Supreme Court itself has a certain autonomy and the ministers in the cabinet have autonomy, so too do we have autonomy in the legislative branch. In the British system, we have to defend the legislative branch of the state.

**Hon. Jeremiah S. Grafstein:** Honourable senators, I do not want to place my great reputation in the Senate in jeopardy by speaking at greater length. I hope that, as the Leader of the Government in the Senate has indicated, we will have ample opportunity to have a fulsome discussion with respect to amendments and to follow the line taken by the committee in its interim report on this measure. I hope then we will be able to have a fulsome discussion about the issues raised by the government leader, because I have the impression that all members on all sides would like the committee not to rush to judgment, but to take the time to listen to witnesses and to consider whether the views that have been reflected on this side and the other side are, in effect, of merit.

I start with the proposition that we have been promised an ample opportunity in committee and in third reading to discuss

this. The government wants to get this through quickly to committee, so I will not hinder that thrust because the will of the Senate has spoken in an overwhelming voice.

Obviously, there are still in the minds of some senators serious questions about the bill, not, as Senator Joyal pointed out, the objectives of the bill, but the balance in the bill to properly satisfy all senators that the private interests of each member and his or her privileges are not in any way detrimental to the public interest. It is a balance and a compromise. I hope that, in the spirit of compromise, we will reach a satisfactory solution that will make those senators comfortable, because we come to this place with different aspirations and at different times.

I wish to say to the Leader of the Government in the Senate that I do not think it is appropriate to criticize those who are sitting in this place today for papers on conduct over the past 30 years. I have only been here for 20 years, and it has only been in the last several years that I have been a member of the Rules Committee. There have been a number of discussions in our caucus about the question of a more transparent regime or a code of conduct. We have never dealt with the issue, as I recall it, of ethics because, as the witnesses before the committee pointed out, ethics is different than conduct. Ethics really deals with the question of religious morality, and we are here, not as a religious body but a secular one, to do what we can in this particular light, and that is to present conduct and to ensure that our private interests are balanced against the public interest.

I for one — and I have said this in committee and say it again — object to the concept of the word “ethics,” because it implies that there is ethical conduct to be considered and that somehow there will be ethical penalties. I have a problem with that notion, and I suggested that in the committee, but because the committee wished to reach a consensus I did not take the matter further. However, I did make my point felt on the record, not once but a number of times, to say we must be very careful with these concepts. I have no problem with a code of conduct and I have no problem with transparency with respect to the code of conduct, but I do resent the notion that we need an ethical counsellor, because I wonder who will overlook the ethical counsellor’s ethics.

**Senator Stratton:** The privacy commissioner.

**Senator Grafstein:** Let me start with the report the Leader of the Government said that I supported, which I did. I want to carefully read to her and to the government members pages 2 and 3 of that report. Honourable senators will recall that this was the eighth report of the committee, but that it was not a report in the traditional sense. It was a collage of arguments. We did reach a consensus on some arguments, but we did not specifically deal with the measure at hand. Let us see what the view was of members of the committee that was, as the government leader pointed out, a consensus. At the end of the second page — and I will read this carefully — it says:

Pursuant to this Order of Reference, your Committee has considered this issue in great detail over the past two months.

The reference was a draft bill, which has since been changed, and the Milliken-Oliver report, and then it was to review the present rules of the Senate, which we did not get into, the proposed changes to the Parliament of Canada Act, which were just tabled in the form of Bill C-34, the Criminal Code, which we barely touched, and the Canadian Constitution, which we alluded to.

I urge every senator to read this very thin report — not thin in substance, but very short. It runs, without the appendix, some 10 pages, double-spaced. It is easy to read.

Let me start with the first directive for the consensus that the chairman was able to exact from our committee.

Pursuant to this Order of Reference, your Committee has considered this issue in great detail over the past two months.

Two months. Not years, but two months. We should not, in the fullness of time, try to make debating points. Let us talk about the facts. The fact is the committee had this draft bill over two months. Remember that the other place had five months to consider its bill, and we had two months.

It goes on, in the second sentence:

While considerable work remains to be done, the members of your Committee believe that it would be useful for our colleagues in the Senate and others to have an idea of our current thinking on the issues raised by the documents.

We started out clearly indicating that consensus by every government member — Senators Rompkey and Milne were on the committee, from time to time the Leader of the Government showed up at meetings, as did the deputy leader, and others. We all agreed there was considerable work remaining to be done after two months.

Then we concluded by saying:

We emphasize that this is an interim report and that our ideas may evolve further as we continue our examination of the issues.

• (2140)

That is a fair statement, but I do not think it implies in any way, shape or form that we have completed or half-completed our work. Not at all. This document is not misleading. Therefore, I do not want anyone to be misled that our work was concluded or that substantial amendments were taken from this report and put into the bill, as the Leader of the Government has suggested. I will deal with that in a moment.

I will now turn to page 3. This will save senators a lot of reading time because I will try to highlight some of the issues that might commend themselves. The report states:

3. We begin by highlighting the key areas of agreement at this point in our study:

The Committee has been guided by two fundamental principles:

The public —

— and Senator LaPierre is concerned about this —

— should have confidence that Parliamentarians conduct themselves with a high standard of ethical behaviour; and

I want to put “ethical” in quotation marks because I objected to that word on the record several times, but the committee on the whole felt that the word should be appropriated. I did not agree. I want to make it clear to the house, as I did to the committee, that I did not agree with the use of that word. “Ethics” is a deeper matter to my mind. I cannot find myself in a position, nor should any of you, where someone can opine on my ethical conduct — my conduct and my standards, yes; my ethics, no.

Having said that, the committee said that the public should have the confidence that parliamentarians conduct themselves to a high standard. I have no problem with that. The interim report goes on to state, “of ethical behaviour.” I would have left it at “a high standard of ethical conduct.”

This is where I agree, and I still agree. The committee agreed unanimously. What did the committee say? It stated in the report:

The Senate, the House of Commons, and the Executive are separate entities.

That is pretty clear, not confusing. There was overwhelming consensus. I will repeat what the committee said:

The Senate, the House of Commons, and the Executive —

I will add the words “the cabinet” so that no one misunderstands what we say. I repeat: The Senate, the House of Commons and the cabinet are separate entities. Hallelujah. We agree with the founding Fathers of Confederation, who made that clear and who in turn agreed with Blackstone, who made it clear, who in turn agreed with *The Spirit of Laws* by Montesquieu, who said carefully that the human condition is flawed. There is no perfect human being. The fathers of the American Constitution agreed. They did not trust the human condition. They did not deal with the ethics of the human condition; they did not trust the human condition. Hence, they said — and we agree — that the only way we can agree that there are reasonable standards of conduct in public life is to ensure that there are checks and balances. Do not allow any element of government to override another element of government. Montesquieu said this in *The Spirit of Laws*, first chapter, first paragraph, in both French and English. Read it. It was well done. It was then picked up by Blackstone, which in turn was picked up by the fathers of the American Constitution and in turn by our Fathers of Confederation. They all agreed that the human condition is flawed and that, therefore, there must be daily checks and balances to separate the functions of government because power corrupts. They all examined the question of power. Everyone is corrupted by power.



**Senator Stratton:** We are seeing that in spades!

**Senator Grafstein:** Therefore, the only way to establish a rational system is to check that power and have daily, weekly and monthly checks in a transparent way, which is the core of the so-called code of conduct.

At the first level, there were to be checks and balances. Do not take what one element of the government says without carefully examining it: first reading, second reading, both Houses, separation of powers, ministers responsible to the House, Houses of confidence, with the Senate to be a check on all of that and to be separate from the courts. The courts are to be off to one side for all the reasons that we talked about in this report. We all agreed with that. It is all in the report. Well done.

We go on to say in our report:

(b) Each of the Senate, the House of Commons and the Executive should have its own ethics officer.

As the Leader of the Government in the Senate pointed out, yes, indeed, there has been a separation, not a full separation — they did not follow our report — but a partial separation. We now have a separate officer for the Senate and a separate officer for the House of Commons and, I assume, the executive and the bureaucracy.

Quite frankly, that is none of our business. We can opine on that. We can say that we do not like the human condition and would like more checks and balances, but let us focus on our own business. We agreed that each the Senate and the House of Commons should have its own ethics officer, but that is not what the bill says. In fact, as the Leader of the Government pointed out, we got a grudging acknowledgment that we should have a separate officer for the Senate.

Did the bill follow the Milliken-Oliver report? Not so, because we said there was to be a separate officer, not someone appointed by the cabinet. That is not separate. The cabinet appoints someone on consultation with the House leaders. The government leader has just said to us, "There is no problem with that. We met the requirement of the Milliken-Oliver report and our own report because it will be a majority view of the house, 51 per cent." Come on! After tonight, we know that governments are governments. There is no question about that. Let us not try to suggest that an independent officer will be truly independent and will only be based on the will of the Senate, which can only be based on what we say in paragraph (d) of the report, namely that:

(d) A Senate ethics officer shall be appointed after agreement by the leadership of the recognized parties in the Senate...

That is not what Bill C-34 says. We heard the discussion between Senator Oliver, Senator Joyal, Senator Lynch-Staunton and others that there is consultation. You pick up the phone and say, "I will appoint George Radwanski. Have you been

consulted? Yes, thank you very much." Boom goes the line and the deal is done. It is not 51 per cent. It is not the will of the Senate; it is the will of the government in the Senate that can compile 51 per cent of the vote. The minority interest is not taken on this side or on the other side.

**The Hon. the Speaker *pro tempore*:** I am sorry to interrupt, but I must advise the honourable senator that his time has expired.

Is leave granted to allow the senator to continue?

**Some Hon. Senators:** Yes.

**Some Hon. Senators:** No.

**Senator Lynch-Staunton:** Closure on closure!

**The Hon. the Speaker *pro tempore*:** Resuming debate.

**Hon. A. Raynell Andreychuk:** Honourable senators, it is unfortunate that we have just voted to limit the debate on this issue, one that will affect all of us in ways that we have yet to discover. It is unfortunate that Senator Grafstein could not finish his points.

I will underscore again that there was some collegiality in the committee. We knew we were addressing a very difficult topic. The majority in the committee said we had to give some advice to the government, despite the fact that we had not finished our work and despite the fact that we said we might change our opinions once we did further study. However, we gave our best advice at the moment, and we underscored it, never believing that it would be used against us to say this was our definitive situation. In a spirit of collegiality, we believed that the message to the government would be conveyed that we had some preliminary discussion and took some decisions.

This debate should not be cut off. Senator Grafstein should not be cut off from finishing his remarks. We have six hours of debate. Look around this chamber. Will we really be here for six hours? We see the lay of the land. We know what will happen. We know who can bring out the numbers. Surely, those who have studied this issue and have something to say should be able to finish. This situation is regrettable and has been regrettable throughout.

Where does this leave the Senate? Is this the way we conduct ourselves? We are talking about our ethical standards, our behaviour. Is this how we will conduct ourselves in the future? I think it is probably the lowest day of my life in the Senate, and I have been here 10 years. It is unfortunate. I hope all honourable senators will remember October 23, 2003, as a day when we shut down debate, when we said to minorities, "Your opinion does not count, so will not give you any time to discuss it."

Honourable senators, I am here. I should count as one person. We know the numbers, so why should 29 of us be here against 60? Surely, if I am here, I should be shown enough respect to be heard.

• (2150)

The views of the minority opposition should count. We are thwarting debate in this chamber, and we will probably exhibit the same behaviour in committee. I can only hope that we do get some time to discuss this in committee in an attempt to complete our study. I would remind honourable senators that our findings were preliminary; they were not definitive.

At the outset, we had one bill before the committee, and now have a different bill before the house. Therefore, we have the right to fulfil our mandate. The Senate must give the committee the responsibility to do its work appropriately and not thwart our work, particularly if we are reasonably here until the end of December. From our side, we on the committee are willing to do that.

It is interesting that we are here talking about a code of conduct and behaviour. We say that the public demands new standards and needs to know that there is some ethical accountability from us. Yet, Bill C-34 does not relate to a code of conduct. It simply puts in place an ethics officer to be appointed by the government. For a number of years, we have had an ethics officer in the Prime Minister's Office. How independent does the public view that ethics officer to be?

If you read the fine print in Bill C-34, you will find that it does not set the standard or the rules. What does it do? It specifies that the senators will set those standards or rules. Is that not what we are doing today? Are we going to pass Bill C-34, which implies we will do something about a code of conduct, as if we have not? What are all those rules in the Parliament of Canada Act? What are our rules here? What have we been doing? Do you think that the public will be satisfied with us writing our own code, once they find out that what the government is selling is not a new standard or a code of conduct for the senators, but simply another ethics officer so that the government can say, "Look what we have done," when in fact that will not be the expectation of the public?

The question I am asked most about the Senate is why certain senators sit on certain boards. Today I say, "Because they have a right to do that. There is no law prohibiting it." They believe, as they keep telling me, that Bill C-34 will correct that. If you question the public a little farther, you will find that they have different opinions about what the code should be. There is no unanimity in the public. We have not had a debate with them. Yet, we are selling Bill C-34 as if it will be an ethical standard set for the Senate. There is nothing in the bill to do that.

On the one hand, we are putting at risk framework legislation, bearing in mind the points made by Senator Joyal, Senator Oliver and now Senator Beaudoin about the court's role in the Senate operations and whether or not there will be a distinct separation of powers after this act comes into force.

On the other hand, we put at risk the privileges and the domain of the Senate, but we give the public nothing in return. We do not give them a code. We do not give them a standard. That is to be done later.

I urge honourable senators to read the bill. It is of no service to the public and it may be a disservice to the Senate. We are being asked to pass this bill in haste. Where is the redeeming feature in this bill — that public necessity is being addressed? There is no code in the bill for the public, and there is an inference that the Senate has not done its job; that in fact we have not had codes to guide us. Where does this bill address amendments to the Parliament of Canada Act? Where does it point to the inappropriateness of the rules that we have today and supplant them with additional rules or different rules? There is nothing in this bill to deal with those matters.

The public will, for a time, believe that they have something new, something transparent, some way to hold parliamentarians accountable. In fact, there is nothing. The emperor has no clothes. This bill needs more scrutiny. If it is not to be debated here, this bill must be debated in committee.

I, for one, in consultation with my colleagues on this side, am prepared to sit as long as it takes in the Senate, this year and next year, to ensure that we have an appropriate code of conduct and that we have framework legislation that is the best the experts can give us.

I do not believe Bill C-34 reflects what Senator Grafstein started and attempted to point out. It does not address our concerns, and it does not reflect what I think needs to be in the bill, if we are allowed to continue our study.

I have yet to receive a satisfactory answer from the government.

We did exactly the same thing with Bill C-36. We entered into a pre-study. We were shortchanged there. When it was reported to the Senate, we were told that no further examination was necessary because we had already dealt with all the issues.

I think we will, in our analysis of Bill C-36, see that we could have done better. With that bill, there was some necessity for haste. September 11 had happened. There was a need to respond to it. There was urgency, and the benefit of the doubt should have gone to the government. The Senate did that.

Where is the emergency situation that relates to this code of conduct? The Leader of the Government is implying we need Bill C-34 to give the public confidence in the Senate because there will be the code of conduct. However, it is not in the bill. It is not there. There is no emergency situation which caused us to curtail our study.

Senators on both sides of the committee wanted a review to assess whether our rules were modern and updated. They wanted to determine whether we have the best response to the issues facing senators today. It is not good enough to say that 30 years ago we talked about ethics, and it is not good enough to say we had the Milliken-Oliver report. Time has passed. Expectations have changed. The Senate's operations have changed. We need to address that issue through a review of our rules and determine whether all of them are sufficient for what we need, or whether we



need to add to them. Then we can consider the best way to implement this code of conduct. Will it be through an ethics officer, or will it be through another mechanism that can be formulated and administered by the Senate?

Perhaps the code of conduct should have been in the bill. That would have been my preference. If we were seriously going to respond to the public's expectations, we would have had a code of conduct in Bill C-34. We would have had extraneous mechanisms — not government mechanisms — that would enforce the code of conduct along with the Senate. It would not be done with an ethics officer appointed by the government.

In conclusion, honourable senators, when we talk about multi-party systems and good governance, let us make certain that the first ethical code gives us an opportunity to do our jobs properly, so that whether I sit in the opposition or in the majority, I can contribute.

• (2200)

We take great pride in saying that we are independent senators and that we speak from our own consciences and our own experiences, but have I had a full opportunity to get involved? I do not think so. Anyone who sat on the committee knew that we were responding to the government because we thought that was the most responsible thing to do. We allowed the report to move forward just to give a heads-up about the issues we were thinking about. We also alerted the government that we were not finished the study and said, "Please do not take these as our final opinions." Are we serious about having a code of conduct? Are we serious about serving the public and making certain that, when we serve, we are not in conflict? Do we want to have a code of standards that most of us agree, when we are in the Senate or outside of it, is desirable and acceptable? That is what we are doing here, and we should not be rushing to judgment on Bill C-34, indicating that there is something important and valuable in that bill. There is not at this point. Perhaps with study, with amendment, marrying it with a code of conduct could give it some value.

Honourable senators, I trust that you will give the committee the opportunity to hold hearings, to deliberate and to debate. What is most disconcerting is that the debate has been about closure, about time allocation, when in fact this very institution is about debate. Debate is my opportunity to attempt to influence others after some reasoned study. I do not think we have done the reasoned study. How can we carry on a debate? If minds are made up, then how can we compromise? How can a minority influence a majority? How can we say we are truly democratic and that we deserve to be here as an institution in Canada in 2003?

**The Hon. the Speaker:** Honourable senators, I regret to advise that Senator Andreychuk's time has expired.

**Senator Andreychuk:** I request leave to continue.

**The Hon. the Speaker:** Senator Andreychuk has requested leave for a question to be put. Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** Leave is granted.

Did you have a question, Senator Wiebe?

**Senator Wiebe:** No, I wanted to participate in the debate.

**The Hon. the Speaker:** Senator Sparrow, did you have a question?

**Hon. Herbert O. Sparrow:** Honourable senators, I do have a question, but if leave has been refused to some senators, then I will not ask for additional time.

**Senator Andreychuk:** You can ask a question.

**Hon. Jack Wiebe:** Honourable senators, I welcome the opportunity to take part in this debate this evening. As most of you know, I was among those who voted in favour of closure on second reading. I look around the chamber tonight and I see a lot of senators here. They are here, I imagine, because they want to take part in this debate. I want the record to show that I was the individual senator who said no to Senator Grafstein going beyond his 15 minutes. I should probably explain.

We have rules within this chamber that state that a senator can speak for 15 minutes. We have just passed a closure motion allowing for six hours of debate. There are more than 45 senators in this chamber tonight. We will be debating this particular bill for the next six hours. If all 45 senators wish to make comments on Bill C-34 for the maximum 15 minutes, not everyone will have an opportunity to get their views on the record. I wonder how many have really put their views on the record in regard to this particular legislation.

I have heard many views off the record but not too many views being put on the record. We have an opportunity tonight to put our particular views on the record as to why we are in favour or are opposed to this legislation. In my mind, most of the work done studying legislation is done in committee. Committee hearings allow people from outside this chamber to provide us with their views as to why they think the legislation is good or why they think the legislation is bad. Committees then bring their work back to this chamber. That is why I believe the real debate takes place at third reading. We have had an opportunity to listen to the pros and cons to legislation, and it is up to us to make up our minds as to the direction we want to take.

I look at the ethics officer question from a rather simplistic point of view. I never object to rules as long as I know what the rules are before I enter the game. Rules are there for a purpose and are meant to be followed. That is why we implement them. If we disagree, for example, with the 15-minute time limit on speeches, we have the opportunity to change the rules. There must have been a reason for that limitation being placed there. In my experience in this chamber for the last three years, we have a tendency not to follow too closely many of the rules that we ourselves have adopted. That may be a positive or a negative; I do not know. I believe rules are made to be followed.

I have no problem with an ethics commissioner. The views of Canadians about the role of the Senate have certainly improved in the last three or four years. That happened because of the tremendous work that our committees have done. Many people have talked to me about senators being in Mexico and about the few indiscretions that have happened. While we may be one great big barrel of wonderfully fine, ethical people, every barrel has a bad apple. What does the general public hear? They do not hear about the 99 apples that are good. They hear and remember the one apple that was bad.

What does an ethics commissioner do? An ethics commissioner gives the general public some comfort that 100 apples might be good. That is why I believe this bill is important.

Honourable senators, I am not afraid, as some have expressed, that our "assets" may become known in court. I am proud of my assets. I worked damn hard for them. I am not ashamed to have people know what they are, whether through this chamber or through the office of an ethics commissioner or whether it is in the courts or in the general public. That is my simplistic view.

I have no problem referring this bill to committee. Let us find out what other senators think tonight. We have an opportunity for another five hours of debate. Let us find out how senators feel so the committee will have some bearing or some guidelines to follow when we present the bill to them.

Honourable senators, I urge your support for this legislation.

**Hon. Marcel Prud'homme:** Will the honourable senator take a question?

**Senator Wiebe:** Yes.

**Senator Prud'homme:** I think I campaigned for Senator Wiebe in Saskatchewan. He is a fine senator.

As Senator Carstairs mentioned in her speech, a few years ago Senator Stanbury and Mr. Blenkarn and Senator Callbeck and I sat for over a year on this issue.

• (2210)

The honourable senator said that he wants us to make our views known. Sometimes the best speech is the vote. If someone is to reflect my views, and many people reflect my views, and others answer to that, then sometimes it is not necessary to express my own views. You express them when you vote.

That being said, I think I was the one who invented two words that worry so many people. I would like honourable senators to help me out in my reflection.

At the Blenkarn committee almost 20 years ago, I invented words to test the difference between "quantification" and "qualification." That was because many senators, but more so members of the House of Commons, were worried about qualifying their assets. However, they had no objection to quantifying them. That means, "I have..." or, "I own..." but

then I have to say how many millions or how many hundreds of thousands — and I am not in that club — or how many tens of thousands I have.

Would the honourable senator comment on the words "qualification" and "quantification"?

**Senator Wiebe:** Honourable senators, I do not know whether I am qualified to answer the question on quantification or qualification in terms of assets. Is that what the honourable senator is asking me?

**Senator Prud'homme:** Yes, because that will be part of it.

**Senator Banks:** You have to tell him how many zeroes you have.

**Senator Wiebe:** Is the honourable senator asking me how many zeroes I have personally? Is that what he is after? What difference does it make? If an individual is worth \$40,000, and he worked hard for that \$40,000 and is satisfied with it, then he should be happy. Why should anyone bother? If I have \$1 million, and I worked darn hard for it, I do not mind people knowing that I have that \$1 million. I would probably show that in my lifestyle, in the kind of house I have or the kind of car I drive. What difference does the actual figure make?

My wife helped me a lot with my assets as well. She has her own assets. I have no objections to letting the general public know what my wife's assets are, and nor does she. She worked just as hard for those assets as I did. She is just as proud of them as I am. Some day, hopefully, our children will be able to enjoy the benefits of those assets. As far as making them public, I have no qualms about that.

**Senator Prud'homme:** I have a great deal of respect for the honourable senator from Saskatchewan.

What worries people is to know that, for instance, you are chairman of the Energy Committee and you happen to own so many shares or you are a director of a certain company. That is what bothers people. It is not the product of all your estate, talents and work. When some members come to make the rules they will see there is a big difference between qualification and quantification.

I think people want to know if members are independent in their responsibilities and do not mix the two or more together. There must have been a debate, unless I invented one. For weeks, we debated the difference between qualification and quantification. Finally, people got around it.

I will leave the matter for tonight and deal with it when we go to the committee. I usually attend these committee meetings, even though I am not a member.

**Senator Wiebe:** Honourable senators, I cannot speak for other senators. My comments tonight were my personal views. It is on that basis, because it is an ethics commissioner that affects this chamber, that I feel I have to express my personal views. I would vote accordingly.



As to how I approached my assets, shares, or involvement with boards of directors, I resigned from many of the positions I held when I accepted the call to the Senate. I did that because, in my mind, this is a very important place. It is a chamber of sober second thought. However, it is also our responsibility to look at both sides of a question. If I believe that I have any conflict, of course it is important for me to remove myself from the conflict situation. It is on that basis that I accepted the call to this chamber. I cancelled memberships that I had and a few other things because I want to tackle this job from an unbiased point of view. That is how I am approaching this ethics package. Some senators may differ in their reasons or their involvement, but that is my particular position. I have no problems with it.

**Senator Andreychuk:** Senator Wiebe mentioned precisely the point that I was trying to make. I understood there was to be an "ethics package." In such a package, we would examine a code of conduct and an ethics officer. We would have then matched that up with the Parliament of Canada Act and all of the other rules that we have that guide our conduct.

Where in Bill C-34 does it talk about the issues that the honourable senator mentioned? Where is there talk of a code of conduct? There is nothing in there. It would simply put in place an ethics officer.

The dilemma I am having is how can I judge a bill when it is only one small piece of the work the Senate should undertake with respect to the ethics package.

**Senator Wiebe:** Again, I look at this very simplistically. I think the code we will follow will be our own code, one that we develop in this chamber.

In my mind, the advantage of having the ability to have an ethics counsellor will say to us all, "Look, it is about time we got off our rear ends and started building that code of conduct." If we do not have an ethics counsellor, we may go on for another 30 years talking about the fact that we should have a code of conduct.

Every mile starts with one step. In my mind, passing this legislation is the first step to ensuring that each and every one of us takes very seriously the fact we have to get down to work and develop our own code of conduct.

**Senator Andreychuk:** Senator Wiebe is indicating that he is in favour not of a code of conduct that would be developed and included in a statute, but in favour of directing our own affairs and setting our own code. Bill C-34 would give us only an ethics officer, something which we could do today without Bill C-34. We could find a person to fill that role. We would keep that person at arm's length, or not at arm's length as we wished. We could do all of that without Bill C-34. Is that correct?

Alternatively, is the honourable senator saying that we have no rules today by which we could do that internally?

**Senator Wiebe:** Honourable senators, I am saying that we have talked about a code of conduct, a code of ethics, for a long time. Since I have been here, it has been debated for just about two years now. We are no further ahead today than we were when we

first started debating this two years ago. This bill provides us with the opportunity to say, "Look, we agree with the fact that we should have an ethics commissioner, counsellor or whatever you want to call it. We also agree that it is about time we developed a code of conduct, one that we can follow." This is what the general public wants. It is about time we started moving on it.

**The Hon. the Speaker:** Honourable senators, I regret to advise that Senator Wiebe's time has expired.

• (2220)

**Hon. Lorna Milne:** Honourable senators, I normally do not comment about bills that will come to a committee that I chair, but I rise to speak to Bill C-34 because I believe that the bill should go to committee immediately, and I think that the time has come for the Senate to move on.

I also believe, if honourable senators will allow me to complete my comments —

**Senator Lynch-Staunton:** How do you know it is going to your committee?

**Senator Milne:** I am certainly presuming something.

I believe that this particular bill goes out of its way to ensure that the rights and the privileges of the Senate are protected.

I also want to correct some impressions that may be lingering in some of our minds. I have to admit that I was taken aback by many of the comments that were made by Senator Joyal yesterday during his speech. He focused his speech on his contention that, as written, this bill does not adequately defend the privileges of senators. There is no doubt that some of his theories are interesting and enlightening, but that is all they are — theories.

As Senator Beaudoin said tonight, this is law in the making. I find that Senator Joyal's comments are not founded in the very real experience in some of the provinces where ethics commissioners currently exist in Canada and in statute. While Senator Joyal has concentrated on constitutional theories and interesting arguments, I stand here to tell honourable senators that this bill does not do anything new in this country and that if we look at the experience of the provinces we do not have a single thing to worry about.

Let me start with Senator Joyal's assertion that because of the way the ethics counsellor is appointed, the Senate will lose much of its independence. In particular, he notes that an ethics counsellor could be appointed with as many as 52 senators opposed to the appointment. While this may certainly have some basis in theory — after all, we can all divide 105 by 2 — it does not at all conform to the practice in other Canadian jurisdictions where the exact same structure is used to appoint ethics officers. In his appearance before the Standing Committee on Rules, Procedures and the Rights of Parliament, Robert Clark, the Ethics Commissioner for Alberta, spoke at great length about the realities of the appointment of an ethics commissioner. During his testimony, he stated:

The practice in Alberta is that the five legislative officers that you listed work with what is referred to as the "legislative officers' committee" which is made up of members of all three parties. For all practicality, a recommendation would not get out of that committee unless there was unanimous or close to unanimous support.

When I took the job on, I went to the two opposition parties and told them that I had put my name forward and that if they were prepared to support me, great; and, if not, then I would withdraw my name. Any person who would take the job on and not have that kind of initial support at the outset would be extremely foolish. I do not see that happening.

I note that he made these comments in direct response to a question from Senator Joyal. In Mr. Clark's experience, he could not see anyone ever being appointed to the position without widespread support of the members on all sides of the legislature, and I agree with him.

How, then, did Alberta create a regime that has produced an appointment process that has such a high degree of consensus building? Section 33 of the Alberta Conflicts of Interest Act mandates that an ethics commissioner be appointed by the Lieutenant Governor on the recommendation of the legislative assembly. There is no requirement that a vote even take place. There is no requirement that all parties be consulted, and there has never been a hint that the Alberta legislature has somehow lost its independence under this act.

In spite of what Senator Grafstein has said, Bill C-34 provides for significantly more input from senators from all parties.

**The Hon. the Speaker:** Do you have a point of order, Senator Prud'homme?

**Senator Prud'homme:** I will call it a question of privilege and ask Your Honour to rule on it.

**The Hon. the Speaker:** Privilege, unfortunately, is not something that we can deal with other than on notice at the beginning of the day. If the honourable senator has a point of order, I will hear him.

**Senator Prud'homme:** I have a point of order. You can rule me out of order, but I will accept your judgment. I come from the House of Commons and I have never asked for an appeal of a Speaker's judgment.

I feel extremely sad when I see that this is an immensely divided Senate. The person who will chair the committee is already answering various senators who participated. How can I go to the committee with confidence? It is not enough to be neutral. When I chaired so many difficult committees in the House of Commons, I made a point of not speaking before I received the bill. It is putting us in a very embarrassing situation.

May I make an appeal to the Honourable Senator Milne to finish?

**The Hon. the Speaker:** I have listened to what Senator Prud'homme has had to say in terms of whether his remarks might be something on which I could rule as a point of order. Unfortunately, I do not believe there is any point of order. Senator Milne is not prevented from speaking by any rule or custom that I know of, so I give the floor to Senator Milne.

**Hon. John Lynch-Staunton (Leader of the Opposition):** On the point of order, is it in order for the chairman of a committee, who by tradition is at least outwardly neutral, unbiased, to take a position on the bill, either favourable or unfavourable? It is an absolute challenge to the sanctity of our committees to know that the chairperson, who has already been told, apparently, that the bill is going to that committee before the Senate has taken a decision, has already taken a position on the bill. How can the committee conduct its proceedings properly knowing in advance that the chairperson has already taken a position on the bill that is to be forwarded to the committee she chairs? I find that reprehensible.

**Hon. Sharon Carstairs (Leader of the Government):** I thank honourable senators for their comments. I have been in this chamber only nine years, but I know of a number of occasions when chairs of committees have actually sponsored bills in this Senate. By sponsoring a bill, they have indicated their support of that bill.

Senator Milne is well within her rights to speak tonight about testimony before her committee, because it was before her committee, and she believes — and I think that is the point she is trying to make — that some of that testimony has not been properly put before us.

**Senator Lynch-Staunton:** How can she speak as the chair of a committee on a bill that has not been even sent to her committee and that the Senate has not decided should go to her committee? Maybe the Senate will think otherwise. How dare she speak in that capacity? She started her comments by saying, "As chairman of the committee that will receive this bill, I want to give you my views on it." As far as I know, we have not decided to which committee this bill will be referred.

**Senator Milne:** Honourable senators, the Senate is of course in charge of whichever committee receives any bill. The pre-study on this bill came to the Rules Committee, and this is what I am talking about. I am talking about statements that have been made in this chamber, as I have a full right as a member of this chamber to do. However, I have no knowledge whatsoever of what committee will receive this bill, and the honourable senator is quite right to correct me on that. With that, I would like to continue my remarks, if I may.

**The Hon. the Speaker:** It was Senator Prud'homme's point of order. I started to answer his question as to whether Senator Milne was in order in speaking as the chair of a committee that might receive this bill following second reading.



Again, I do not think that Senator Milne breaches any rule by speaking. I know this is a highly charged matter, but I think the points that have been raised in the context of the point of order are for the Senate as a whole to deal with and decide in terms of to which committee the bill might be referred or whether it is referred to Committee of the Whole. I am not aware of any rule or practice set out in the texts on parliamentary procedure that would prevent Senator Milne from speaking.

• (2230)

**Senator Milne:** I shall edit names from my remarks.

Bill C-34 provides for significantly more input from senators from all parties. The first proposed section of the bill reads as follows:

20 (1) The Governor in Council shall, by commission under the Great Seal, appoint a Senate Ethics Officer after consultation with the leader of every recognized party in the Senate and after approval of the appointment by resolution of the Senate.

Now, we would be fools to approve the appointment of someone who was not accepted by all sides of this august chamber. I suggest that our deliberations on the selection of an ethics officer will unfold in much the same way as suggested by Northwest Territories Ethics Commissioner Ted Hughes, when he noted:

I think that, when the time comes for you select a conflict or integrity or ethics commissioner or counsellor, or more than one, if that is what you decide, you will find that you will work to come up with an eminent nominee who will enjoy the confidence of the whole house. I certainly think that is very desirable.

Having served several years in this place and still learning, I have no doubt that all senators will work together to find an ethics officer of the highest integrity in whom we all have confidence.

The second point that was raised in a previous speech is the fact that when acting to punish its members, senators are somehow not acting within the sphere of the Senate's constitutional powers. The 1990 British case of *Ross v. Edwards* was cited in order to establish the fact that the proposed bill is not a matter of privilege. As I noted before, this could be a problem in theory, but, on the other hand, I would prefer to look at the more recent Canadian cases to determine whether or not such a thing would be within the ambit of parliamentary privilege as defined by the Constitution.

As I noticed when I was questioning Senator Oliver yesterday on the decision of the B.C. Court of Appeal in *Taffler v. Hughes*, Mr. Justice Lambert stated:

In my opinion, the privileges of the Legislative Assembly extend to the Commissioner who is expressly made an officer of the Assembly...

He goes on to say:

In my opinion, decisions made by the Commissioner and the carrying out of the Commissioner's powers under the Act are decisions made within, and with respect to, the privileges of the Legislative Assembly and are not reviewable in the courts.

This is not the only recent court decision where the courts have specifically found that disciplinary matters fall squarely within privilege. In the decision of the Supreme Court of Canada in *Harvey v. New Brunswick*, Madam Justice McLachlin, now Chief Justice, states:

The history of the prerogative of Parliament and legislative assemblies to maintain the integrity of their processes by disciplining, purging and disqualifying those who abuse them is as old as Parliament itself. Erskine May, writing in 1863 —

That was before Confederation. Chief Justice McLachlin goes on to state:

— stated this in his *Treatise on the Law, Privileges, Proceedings, and Usage of Parliament*.

The now Chief Justice also noted in *Harvey* that:

Parliament and the legislatures of Canada are not confined to regulating procedure within their own chambers, but also have the power to impose rules and sanctions pertaining to transgressions committed outside their chambers.

She goes on to say that:

The power of Parliament and the legislatures to regulate their procedures both inside and outside the legislative chamber arises from the *Constitution Act, 1867*. The preamble to the *Constitution Act, 1867* affirms a parliamentary system of government, incorporating into the Canadian Constitution the right of Parliament and the legislatures to regulate their own affairs. The preamble also incorporates the notion of the separation of powers, inherent in British parliamentary democracy, which precludes the courts from trenching on the internal affairs of the other branches of government.

The Canadian position, as defined by the current Chief Justice of the Supreme Court, could not be more clear. On repeated occasions, the court has found that disciplinary matters are matters of privilege and the courts have no business interfering. There are no Canadian authorities that contradict this position, and I challenge someone to find such an authority.

Now, some may believe that the decisions in these cases are wrong, but if any argument regarding section 18 of the BNA Act were to be put before the courts, then perhaps they might feel that the courts would take the opportunity to jump on the matter. Unfortunately, I do not think this is the case either.

The key thing to note in this context is that the power to make decisions on what is and is not a contempt will continue to reside within the Senate as a result of Bill C-34. The Senate ethics officer will not have any power to make any decisions whatsoever regarding the punishment of a senator. The only thing that he or she can do is make recommendations to the Senate or to a committee of the Senate on what course of action to take. Those limits are very clearly proscribed within the statute and we cannot, therefore, import any analysis with respect to a British register of interests into the context of the bill that is before you because we are dealing here with fundamentally different circumstances. We must recognize that the action being taken here is to build a formal and robust support structure that will assist the Senate itself in making decisions about the conduct of its members. It is only on that basis that we can evaluate whether Bill C-34 is a proper and constitutional exercise of our privileges.

According to the test that has been set out in order for Bill C-34 to be a proper exercise of our privileges, it must be shown that the right to discipline members is a privilege that now exists within the British parliamentary system. This is what we have been told.

While Bill C-34 contemplates a comprehensive code of ethics that ensures senators' behaviour is of such high calibre and is seen to be of such high calibre that the public maintains confidence in the Senate as an institution, it is far more than the British register of interests. In fact, a parliament's ability to discipline its members when they act in such a manner as to bring a house into disrepute is centuries old and did exist at the time of Confederation.

Honourable senators, if we look at the twenty-second edition of Erskine May, on page 112 we will find numerous examples where a House of Parliament has exercised its privilege to discipline its members for contempt of Parliament. The examples on page 112 are all pre-Confederation and are all well established by the authorities, but I will not go on to list them because there are quite a few.

The kinds of conduct upon which contempt charges have been based dozens of times in the history of the British Commonwealth form the basis of the code of conduct that the Rules Committee is currently studying. The steps that are to be taken are nothing more than a modernization of centuries-old practice and are well within the normal bounds of parliamentary privilege. As such, I simply do not find arguments about the unconstitutionality of Bill C-34 to be at all persuasive.

• (2240)

Finally, it has been suggested that this bill does not make it clear that any senator who follows the advice of the ethics commissioner or ethics officer is completely protected under the regime. In my opinion, the only reason this section is not there is because it is more properly placed in the code of conduct itself. Senator Andreychuk has said that the code of conduct should be in statute. I personally am absolutely and completely opposed to the code of conduct being in statute. It must be within the rules of the Senate itself, not in statute.

During the hearings of the Rules Committee, there was discussion in two areas that will help us to deal with this particular issue. Your committee came to a consensus that, should

there be a bill that created the position of ethics commissioner, the bill should be limited in scope and only the bare minimum of proposed sections should be in the bill. We heard that it was best to keep everything humanly possible in the code and not in the bill — not in statute. We also heard testimony indicating that it would be most beneficial if senators who followed the advice of the ethics officer were protected from any proceedings. Given the combination of these two sets of testimony, I have no doubt that, within the robust code of conduct that the Rules Committee is currently debating and that will eventually by some committee be hopefully accomplished, you will see —

**The Hon. the Speaker:** I am sorry to interrupt, Senator Milne, but I must advise that your 15 minutes have expired, and we did allow the time for the question of order to be taken into consideration in the determination of your time.

**Senator Milne:** I have about a page and a half to go. May I have leave?

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Senator Lynch-Staunton:** A page and a half, no more.

**Senator Prud'homme:** I am ready to say "yes" if we give an equal amount of time to Senator Grafstein.

**The Hon. the Speaker:** I do not think we can have conditions set except under rare circumstance.

**Senator Grafstein:** I appreciate the comment. I think the honourable senator should proceed. I would like to hear the conclusion of the argument. I have heard no objection on this side.

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Senator Sparrow:** No.

**The Hon. the Speaker:** Leave is not granted.

**Hon. Tommy Banks:** Honourable senators, it is the mark of only the strongest friendships that that is where the vehement disagreements take place sometimes, just as between my best honourable friend Senator Wiebe and myself and sometimes between members on this side of the house and colleagues on the other side of the house. Generally speaking, we agree precisely on exactly where we want to go; we disagree from time to time on how to get there.

I did something tonight, senators, that I promised myself, when I first came here, that I would never do. I abstained on a vote. I had the naiveté to believe that I would always form a position and take a stand. Tonight, I did not, because I had undertaken not to vote against the government, and I did not. At the same time as I made that undertaking, I expressed serious misgivings about this bill and explained that I was torn by it.



I have sought advice other than in this place, and I have sought advice from people in this place, and I must say that the best argument that I can think of for debate has been given in the past few hours, during which I believe almost all of us, certainly I have learned a great deal from the quality of the debate and from what we have heard on all sides. Every member who has spoken has said things that are true and right — every member, regardless of which side they spoke on.

I have followed this issue with great interest ever since it first came up. Honourable senators may remember that several months ago, I circulated a list which codified in one place all of the applications of regulations and law which applied to the conduct of senators in the Parliament of Canada Act, in the Criminal Code, and in the *Rules of the Senate*. I believed then, and I believe now, that there could be very little that a senator could ever do by way of ethical transgression or improper or imprudent conduct that would not be caught by those existing regulations and laws.

However, I also recognize that there is a political fact at work here, and that there is pressure for us to do something. I happen to believe it should be entirely rules-based, that it should be done within this house by resolution and rules of this house, that the ethics person ought to be appointed by and for this house, and that it ought thereby to be circumscribed from any questions of intervention by the courts about which we have heard.

I am worried about issues that were raised by Senator Joyal, including consultation. Mr. Churchill observed that consultation is a wonderful thing. The warden can have a consultation on Thursday evening with the prisoner about whether the prisoner would like to have his head cut off tomorrow morning and, on the whole, the prisoner is likely to say that he would rather not, but then on Friday morning, his head will be chopped off, but the warden will be able to say, "But, I consulted with him on this issue." Consultation is consultation is consultation.

The checks and balances question that has been raised by many senators is something that obtains in particular reference to this bill and has already been redressed to a degree. When Sir Clifford Sifton was the minister of the interior — he is the guy who invented the last "best west" campaign which brought people to populate our part of the country in order that it would not be taken over by others — he observed of the Senate that its job was not to be a bulwark against the House of Commons; its job was to be a bulwark against the excesses of the government. He was right then, and he would be right if he said that today.

Independence has been raised many times. The fact of our absolute independence in most respects is the entire basis of every speech that I have ever given in the aggrandizement of the interests of the Senate to every Rotary Club in Alberta, and I have made the point that, if our independence is ever compromised to any degree, then we should abolish the Senate because we would become useless.

Some have called into question some of the advice that I have heard, and others which I have sought out have called into question the sanctity and the unassailability of that very independence and our capacity to defend against assaults upon it if we deal, in creating our conduct overseer, with a legislated

rather than a rules-based appointment. Senator Milne has just referred to that. An act that says to the court, "You cannot get in this door," can always be overturned. There is a danger if the means of implementing or having our officer is legislative and not rules-based.

I have heard arguments of jurisprudence, and you will appreciate I have only the most grazing understanding of what that even means, but we have heard jurisprudence saying on this side that it is XYZ and jurisprudence on this side saying that it is ABC. I would argue that, if we have to choose between jurisprudence and jurisprudence, we should choose prudence and go in that direction.

Honourable senators, I cast no aspersion on the Rules Committee or on any of its members, on Senator Joyal, on Senator Grafstein or on Senator Milne when I make the following suggestion. It is clear now that this bill will be referred to a committee for further study. We have, as the leader has pointed out to us, already heard from the Rules Committee as to its views on this bill. I do not think there is anything in this bill as it is presently before us that refers specifically to any rule or rules, but there is a great deal in this bill that is legal, and there is a great deal in this bill, since it deals with the privilege of Parliament, that is constitutional. I would therefore urge that, when we vote at the end of second reading to send this bill to a committee for study, that that committee should most logically be, since two heads are always better than one, the Standing Senate Committee on Legal and Constitutional Affairs.

At this point, honourable senators, I yield to Senator Grafstein.

**The Hon. the Speaker:** Do you have a question, Senator Grafstein?

**Senator Banks:** I yield the floor to Senator Grafstein.

**Senator Lynch-Staunton:** We do not do that here.

**The Hon. the Speaker:** We do not have that procedure here, but Senator Grafstein could make a comment or ask you a question.

• (2250)

**Senator Grafstein:** I appreciate those comments. I had heard that a number of senators did not wish to use their time. That is why I asked for consent. Senator Wiebe did not hear that and, thus, did not allow me to speak beyond my time. I will abide by the rules and not speak beyond my time.

**Senator Prud'homme:** May I ask a question? You have raised an excellent suggestion. Perhaps I may add one, for your comment. In the House of Commons for a while there was board of chairs, usually elders, people who could handle very difficult situations. The Speaker was the one who would, from time to time, choose them. They could be from any party. I chaired, for instance, the discussions on the equity bill. That was the most explosive issue in the matter of employment. The issue was extremely divided and extremely difficult, but we sailed very well through, with patience.

Would you think that we should, using your first suggestion, consider this idea of having a board? Sometimes we may send too many bills to the same committee. That was exactly what was happening in the House of Commons. Some committees had nothing to do with bills themselves. The panel of chairs was at the disposal of the House, chosen by the Speaker.

**Senator Banks:** Honourable senators, I believe I understand the question, but I do not think that I am competent to answer it. I have never been dissatisfied so far with the selection that has been made by the house of which committee a bill ought to be sent to for study. I have never had any reservations about that, and I have no reservation about this bill having been sent to the Rules Committee and our having heard what it had to say. I am merely now proposing that it would be a good idea, since we have the opportunity to hear from a second group of senators. I prefer the idea of a motion being approved by the house to another board.

**Hon. Joan Fraser:** I have a question for Senator Banks. It has been my impression that the Senate prides itself on institutional memory and does not shop legislation around from one committee to another. Has it had escaped his memory, the hour being late, that the full title of the Rules Committee is the Standing Committee on Rules, Procedures and Rights of Parliament, which items the committee has spent much time contemplating and building up a background of understanding?

**Senator Banks:** I regret not having used its full name. I was aware that that was among its prerogatives. I certainly agree that the idea of institutional memory is useful. However, in this particular case, this bill is unique. This has never occurred before, and in whatever form it ends up, is unlikely ever to occur again. In that case, I think it is advisable and advantageous to us to hear from studies that have been conducted in this unique case by more than one committee.

**Hon. Francis William Mahovlich:** As I listened, I noticed that no one mentioned the cost to the public for this commissioner. I should like to recommend that the first thing we do is set up a comptroller, since it appears that most of these commissioners adopt a carte blanche approach.

**Senator Lynch-Staunton:** Visa and Master Card.

**Senator Mahovlich:** I also think we should not rush into this. I know the debate has been going on for 30 years by many smarter men than us. It is still under discussion. If you read your history books, you will read about wars that lasted 100 years.

**The Hon. the Speaker:** If no other senator wishes to participate in the debate, then my obligation is, as called for under the rules and the order under which we are operating, to put the question. In that no senator wishes to speak, I will then put the question.

**Senator Grafstein:** I have a point of order. I spoke to Senator Wiebe about his intervention against me continuing. I sought the leave of the house and I accepted the view of one senator that, on the information he has since given me, he felt it was not proper for

a senator to appropriate more than ample time. I was two thirds through my summary and felt that, with the leave of the house, I would like to continue.

However, here we are, in six hours of full and fulsome debate, and we are aborting what I consider to be an appetite for further information. I am prepared to speak for another five or 10 minutes, with the consent of the house.

**The Hon. the Speaker:** Senator Grafstein is asking for leave to take the floor again in this matter, having spoken once. I will put the question to the house. Honourable senators, is leave granted for Senator Grafstein to continue to speak?

**Senator Lynch-Staunton:** For how long?

**An Hon. Senator:** Leave denied.

**The Hon. the Speaker:** Leave is not granted. I return then to the matter before us, which is the question on the motion of Senator Carstairs.

I will now, having looked again for speakers and seeing none, put the question.

It was moved by the Honourable Senator Carstairs, seconded by the Honourable Senator Graham, that this bill be read a second time.

Is it your pleasure, honourable senators, to adopt the motion?

All those in favour of the motion will please say "yea."

**Some Hon. Senators:** Yea.

**The Hon. the Speaker:** Those opposed to the motion will please say "nay."

**Some Hon. Senators:** Nay.

**The Hon. the Speaker:** I believe the "yeas" have it.

*And two honourable senators having risen:*

**The Hon. the Speaker:** Call in the senators.

Do you wish to speak, Senator Stratton?

**Hon. Terry Stratton:** Honourable senators, I wanted to refer to rule 39(4), that the vote be deferred to 5:30 of the next sitting of the Senate.

**Hon. Bill Rompkey:** Could we agree, Your Honour, to ring the bell at 3 o'clock at the next sitting of the Senate, with the vote at 3:30? I make that proposal because in all likelihood the next sitting of the Senate will be Monday. If it is Monday, we have the land mines dinner starting at 5:30.



**Senator Stratton:** If we can have the assurance from the leadership that it will indeed be Monday, then we would be cooperative in that sense. The only real concern that I have, typically, is for senators returning to Ottawa in time for the vote. If I may ask, when does the dinner start?

**Senator Carstairs:** It starts at 5:30.

**Senator Stratton:** A vote at 4 o'clock or 4:30 would be in order. We want to allow time for people to return to Ottawa. It takes Senator Carney 12 hours to get here and it takes Senator Andreychuk 10 hours. As for Senator Watt, God only knows how long he takes.

**Senator Carstairs:** I think we are all acting in a spirit of cooperation. I want to point out that the flight from Vancouver arrives at 4 o'clock, so even 4:30 might be too soon. Perhaps we could agree on five o'clock. That will give us time for the land mines dinner.

• (2300)

**The Hon. the Speaker:** I should remind honourable senators that either whip can defer the vote to 5:30 the next day. The government whip, as the next day is Friday in this case, has the right to defer the vote Monday. If it is to be held at any time other than 5:30, unanimous consent is required.

What is the question the honourable senator is asking me to put to this house?

**Senator Stratton:** It is a 5:00 vote with a half-hour bell. The bells will start ringing at 4:30 for a 5:00 vote on Monday.

**Senator Rompkey:** I absolutely agree.

**The Hon. the Speaker:** I look to all senators. That is not what is provided for in the rules. The change requires unanimous consent. Is it agreed that the vote will be taken, as the whips have agreed, at 5:00 on Monday, with the bells to ring at 4:30 in the afternoon?

**Hon. Senators:** Agreed.

## PUBLIC SERVICE MODERNIZATION BILL

### THIRD READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Harb, for the third reading of Bill C-25, to modernize employment and labour relations in the public service and to amend the Financial Administration Act and the Canadian Centre for Management Development Act and to make consequential amendments to other Acts.

**Senator Day:** Question!

**The Hon. the Speaker:** Is the house ready for the question?

**Hon. Terry Stratton:** If I may, Your Honour, I believe this item stands in the name of Senator Oliver. I will move the adjournment in my name.

On motion of Senator Stratton, debate adjourned.

[Translation]

## BUSINESS OF THE SENATE

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I think that we have had very interesting debates. Time just flew. At this late hour, I think we might find consent to stand all items on the Order Paper that have not been reached, except for Government Notices of Motions, in the order in which they are today.

[English]

**Hon. Jack Wiebe:** Honourable senators, if I could be permitted a question, will we adjourn on Monday at 5:30? If not, I would like to move the motion, on behalf of Senator Kenny, to allow the National Security and Defence Committee to meet on Monday in the event that the house is still sitting.

**Senator Robichaud:** The honourable senator is referring to Motion No. 158 on the Notice Paper, the last item. This committee usually sits on Mondays when the Senate does not usually sit. The committee requires permission to sit. It is understood that the committee would have to sit after the vote and not during the vote. Perhaps I could amend the proposition I made that all items stand, except Motion No. 158. Once we deal with that, I would proceed to Government Notices of Motions.

**The Hon. the Speaker:** Is it agreed, honourable senators?

**Hon. Senators:** Agreed.

## NATIONAL SECURITY AND DEFENCE

### COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

**Hon. Jack Wiebe,** for Senator Kenny, pursuant to notice of October 21, 2003, moved:

That the Standing Senate Committee on National Security and Defence have power to sit at 5:00 p.m. on Monday, October 27, 2003, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

**The Hon. the Speaker:** There is a vote at 5:00 and the committee wishes to sit at 5:00.

[Translation]

**Senator Wiebe:** I would ask permission to amend the motion to read 5:30.

**The Hon. the Speaker:** I believe that would be adequate.

Is it agreed that the motion be amended to read "sit at 5:30 p.m." instead of "sit at 5:00 p.m."?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** It is your pleasure, honourable senators, to adopt the motion, as amended?

**Hon. Senators:** Agreed.

Motion agreed to, as amended.

### ADJOURNMENT

Leave having been granted to revert to Government Notices of Motions:

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(h), I move:

That when the Senate adjourns today, it do stand adjourned until Monday, October 27, 2003, at 2:00 p.m.

**The Hon. the Speaker:** Honourable senators, is leave granted?

**Hon. Senators:** Agreed.

Motion agreed to.

The Senate adjourned until Monday, October 27, 2003, at 2 p.m.



**THE SENATE OF CANADA**  
**PROGRESS OF LEGISLATION**  
**(2nd Session, 37th Parliament)**  
**Thursday, October 23, 2003**

**GOVERNMENT BILLS**  
**(SENATE)**

No.	Title	1 <sup>st</sup>	2 <sup>nd</sup>	Committee	Report	Amend	3 <sup>rd</sup>	R.A.	Chap.
S-2	An Act to implement an agreement, conventions and protocols concluded between Canada and Kuwait, Mongolia, the United Arab Emirates, Moldova, Norway, Belgium and Italy for the avoidance of double taxation and the prevention of fiscal evasion and to amend the enacted text of three tax treaties.	02/10/02	02/10/23	Banking, Trade and Commerce	02/10/24	0	02/10/30	02/12/12	24/02
S-13	An Act to amend the Statistics Act	03/02/05	03/02/11	Social Affairs, Science and Technology	03/04/29	0	03/05/27		

**GOVERNMENT BILLS**  
**(HOUSE OF COMMONS)**

No.	Title	1 <sup>st</sup>	2 <sup>nd</sup>	Committee	Report	Amend	3 <sup>rd</sup>	R.A.	Chap.
C-2	An Act to establish a process for assessing the environmental and socio-economic effects of certain activities in Yukon	03/03/19	03/04/03	Energy, the Environment and Natural Resources	03/05/01	0	03/05/06	03/05/13	7/03
C-3	An Act to amend the Canada Pension Plan and the Canada Pension Plan Investment Board Act	03/02/26	03/03/25	Banking, Trade and Commerce	03/03/27	0	03/04/01	03/04/03	5/03
C-4	An Act to amend the Nuclear Safety and Control Act	02/12/10	02/12/12	Energy, the Environment and Natural Resources	03/02/06	0	03/02/12	03/02/13	1/03
C-5	An Act respecting the protection of wildlife species at risk in Canada	02/10/10	02/10/22	Energy, the Environment and Natural Resources	02/12/04	0	02/12/12	02/12/12	29/02
C-6	An Act to establish the Canadian Centre for the Independent Resolution of First Nations Specific Claims to provide for the filing, negotiation and resolution of specific claims and to make related amendments to other Acts	03/03/19	03/04/02	Aboriginal Peoples	03/06/12	5	referred back to Committee 03/09/25		
C-8	An Act to protect human health and safety and the environment by regulating products used for the control of pests	02/10/10	02/10/23	Social Affairs, Science and Technology	02/12/10	0	02/12/12	02/12/12	28/02
C-9	An Act to amend the Canadian Environmental Assessment Act	03/05/06	03/05/13	Energy, the Environment and Natural Resources	03/06/04	0	03/06/05	03/06/11	9/03

No.	Title	1 <sup>st</sup>	2 <sup>nd</sup>	Committee	Report	Amend	3 <sup>rd</sup>	R.A.	Chap.
C-10	An Act to amend the Criminal Code (cruelty to animals and firearms) and the Firearms Act	02/10/10	02/11/20	Legal and Constitutional Affairs	02/11/28	Divided Message from Commons concurring with division 03/05/07			
C-10A	An Act to amend the Criminal Code (firearms) and the Firearms Act	-	-	Legal and Constitutional Affairs	02/11/28	0	02/12/03	03/05/13	8/03
C-10B	An Act to amend the Criminal Code (cruelty to animals)	-	-	Legal and Constitutional Affairs	03/05/15	5	03/05/29 Message from Commons- agree with two amendments, disagree with two, and amend one 03/06/09 Referred to committee 03/06/11 Reported 03/06/12 Report adopted (insist on one, replace one, amend one) 03/06/19 Message from Commons- disagree with Senate's amendments 03/09/30		
C-11	An Act to amend the Copyright Act	02/10/10	02/10/30	Social Affairs, Science and Technology	02/12/05	0	02/12/09	02/12/12	26/02
C-12	An Act to promote physical activity and sport	02/10/10	02/10/23	Social Affairs, Science and Technology	02/11/21	0 + 1 at 3 <sup>rd</sup> 02/12/04 2 at 3 <sup>rd</sup> 03/02/04	03/02/04	03/03/19	2/03
C-14	An Act providing for controls on the export, import or transit across Canada of rough diamonds and for a certification scheme for their export in order to meet Canada's obligations under the Kimberley Process	02/11/19	02/11/26	Energy, the Environment and Natural Resources	02/12/04	0	02/12/05	02/12/12	25/02



No.	Title	1 <sup>st</sup>	2 <sup>nd</sup>	Committee	Report	Amend	3 <sup>rd</sup>	R.A.	Chap.
C-15	An Act to amend the Lobbyists Registration Act	03/03/19	03/04/03	Rules, Procedures and the Rights of Parliament	03/05/14	1	03/05/28 Message from Commons-agree with amendment 03/06/09	03/06/11	10/03
C-17	An Act to amend certain Acts of Canada, and to enact measures for implementing the Biological and Toxin Weapons Convention, in order to enhance public safety	03/10/08							
C-21	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2003	02/12/05	02/12/10	—	—	—	02/12/11	02/12/12	27/02
C-24	An Act to amend the Canada Elections Act and the Income Tax Act (political financing)	03/06/11	03/06/16	Legal and Constitutional Affairs	03/06/19	0	03/06/19	03/06/19	19/03
C-25	An Act to modernize employment and labour relations in the public service and to amend the Financial Administration Act and the Canadian Centre for Management Development Act and to make consequential amendments to other Acts	03/06/03	03/06/13	National Finance	03/09/18	0			
C-28	An Act to implement certain provisions of the budget tabled in Parliament on February 18, 2003	03/05/27	03/06/04	National Finance	03/06/12	0	03/06/19	03/06/19	15/03
C-29	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2003	03/03/25	03/03/26	—	—	—	03/03/27	03/03/27	3/03
C-30	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2004	03/03/25	03/03/26	—	—	—	03/03/27	03/03/27	4/03
C-31	An Act to amend the Pension Act and the Royal Canadian Mounted Police Superannuation Act	03/06/03	03/06/11	National Security and Defence	03/06/16	0	03/06/17	03/06/19	12/03
C-34	An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence	03/10/02							
C-35	An Act to amend the National Defence Act (remuneration of military judges)	03/06/13	03/09/18	Legal and Constitutional Affairs					
C-37	An Act to amend the Canadian Forces Superannuation Act and to make consequential amendments to other Acts	03/10/20							
C-39	An Act to amend the Members of Parliament Retiring Allowances Act and the Parliament of Canada Act	03/06/03	03/06/11	Legal and Constitutional Affairs	03/06/19	0	03/06/19	03/06/19	16/03
C-41	An Act to amend certain Acts	03/10/07							

No.	Title	1 <sup>st</sup>	2 <sup>nd</sup>	Committee	Report	Amend	3 <sup>rd</sup>	R.A.	Chap.
C-42	An Act respecting the protection of the Antarctic Environment	03/06/13	03/09/17	Energy, the Environment and Natural Resources	03/09/18	0	03/10/07	03/10/20	20/03
C-44	An Act to compensate military members injured during service	03/06/13	03/06/13	National Security and Defence	03/06/16	0	03/06/18	03/06/19	14/03
C-47	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2004	03/06/13	03/06/17	—	—	—	03/06/18	03/06/19	13/03
C-48	An Act to amend the Income Tax Act (natural resources)	03/10/22							
C-49	An Act respecting the effective date of the representation order of 2003	03/10/23							
C-53	An Act to change the names of certain electoral districts	03/10/23							

## COMMONS PUBLIC BILLS

No.	Title	1 <sup>st</sup>	2 <sup>nd</sup>	Committee	Report	Amend	3 <sup>rd</sup>	R.A.	Chap.
C-205	An Act to amend the Statutory Instruments Act (disallowance procedure for regulations)	03/06/16	03/06/19	—	—	—	03/06/19	03/06/19	18/03
C-212	An Act respecting user fees	03/09/30	03/10/22	National Finance					
C-227	An Act respecting a national day of remembrance of the Battle of Vimy Ridge	03/02/25	03/03/26	National Security and Defence	03/04/02	0	03/04/03	03/04/03	6/03
C-249	An Act to amend the Competition Act	03/05/13	03/09/17	Banking, Trade and Commerce					
C-250	An Act to amend the Criminal Code (hate propaganda)	03/09/18							
C-300	An Act to change the names of certain electoral districts	02/11/19	03/06/03	Legal and Constitutional Affairs					
C-411	An Act to establish Merchant Navy Veterans Day	03/06/12	03/06/17	National Security and Defence	03/06/18	0	03/06/19	03/06/19	17/03
C-459	An Act to establish Holocaust Memorial Day	03/10/21							

## SENATE PUBLIC BILLS

No.	Title	1 <sup>st</sup>	2 <sup>nd</sup>	Committee	Report	Amend	3 <sup>rd</sup>	R.A.	Chap.
S-3	An Act to amend the National Anthem Act to include all Canadians (Sen. Poy)	02/10/02	03/06/10	Social Affairs, Science and Technology	03/10/23	0			
S-4	An Act to provide for increased transparency and objectivity in the selection of suitable individuals to be named to certain high public positions (Sen. Stratton)	02/10/02							
S-5	An Act respecting a National Acadian Day (Sen. Comeau)	02/10/02	02/10/08	Legal and Constitutional Affairs	03/06/03	2	03/06/05	03/06/19	11/03



No.	Title	1 <sup>st</sup>	2 <sup>nd</sup>	Committee	Report	Amend	3 <sup>rd</sup>	R.A.	Chap.
S-6	An Act to assist in the prevention of wrongdoing in the Public Service by establishing a framework for education on ethical practices in the workplace, for dealing with allegations of wrongdoing and for protecting whistleblowers (Sen. Kinsella)	02/10/03							
S-7	An Act to protect heritage lighthouses (Sen. Forrestall)	02/10/08	03/02/25	Social Affairs, Science and Technology	03/06/19	0	03/09/24		
S-8	An Act to amend the Broadcasting Act (Sen. Kinsella)	02/10/09	02/10/24	Transport and Communications	03/03/20	0	03/04/02		
S-9	An Act to honour Louis Riel and the Metis People (Sen. Chalfoux)	02/10/23	03/05/06	Legal and Constitutional Affairs					
S-10	An Act concerning personal watercraft in navigable waters (Sen. Spivak)	02/10/31	03/02/25	Energy, the Environment and Natural Resources	03/09/18	0			
S-11	An Act to amend the Official Languages Act (promotion of English and French) (Sen. Gauthier)	02/12/10	03/05/07	Official Languages					
S-12	An Act to repeal legislation that has not been brought into force within ten years of receiving royal assent (Sen. Banks)	02/12/11	03/02/27	Legal and Constitutional Affairs					
S-14	An Act to amend the National Anthem Act to reflect the linguistic duality of Canada (Sen. Kinsella)	03/02/11	03/06/17	Official Languages					
S-15	An Act to remove certain doubts regarding the meaning of marriage (Sen. Cools)	03/02/13	Dropped from Order Paper pursuant to Rule 27(3) 03/06/05						
S-16	An Act to amend the Constitution Act, 1867 and the Parliament of Canada Act (Speakership of the Senate) (Sen. Oliver)	03/03/18							
S-17	An Act respecting the Canadian International Development Agency, to provide in particular for its continuation, governance, administration and accountability (Sen. Bolduc)	03/03/25	03/06/19	National Finance					
S-18	An Act to amend the Criminal Code (lottery schemes) (Sen. Lapointe)	03/04/02	03/10/21	Legal and Constitutional Affairs					
S-20	An Act to amend the Copyright Act (Sen. Day)	03/05/15	03/10/07	Banking, Trade and Commerce (withdrawn) 03/10/08 Social Affairs, Science and Technology					
S-22	An Act respecting America Day (Sen. Grafstein)	03/09/16							
S-23	An Act to prevent unsolicited messages on the Internet (Sen. Oliver)	03/09/17							

No.	Title	1 <sup>st</sup>	2 <sup>nd</sup>	Committee	Report	Amend	3 <sup>rd</sup>	R.A.	Chap.
S-24	An Act to amend the Royal Canadian Mounted Police Act (modernization of employment and labour relations) (Sen. Nolin)	03/10/23							

## PRIVATE BILLS

No.	Title	1 <sup>st</sup>	2 <sup>nd</sup>	Committee	Report	Amend	3 <sup>rd</sup>	R.A.	Chap.
S-19	An Act respecting Scouts Canada (Sen. Di Nino)	03/05/14	03/06/09	Legal and Constitutional Affairs					
S-21	An Act to amalgamate the Canadian Association of Insurance and Financial Advisors and The Canadian Association of Financial Planners under the name The Financial Advisors Association of Canada (Sen. Kirby)	03/06/03	03/06/09	Banking, Trade and Commerce					



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